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HAUD GUÉGUEN

THE CHOICE OF CIVIL WAR

NEOLIBERAL STRATEGY AND THE POLITICS OF THE ENEMY

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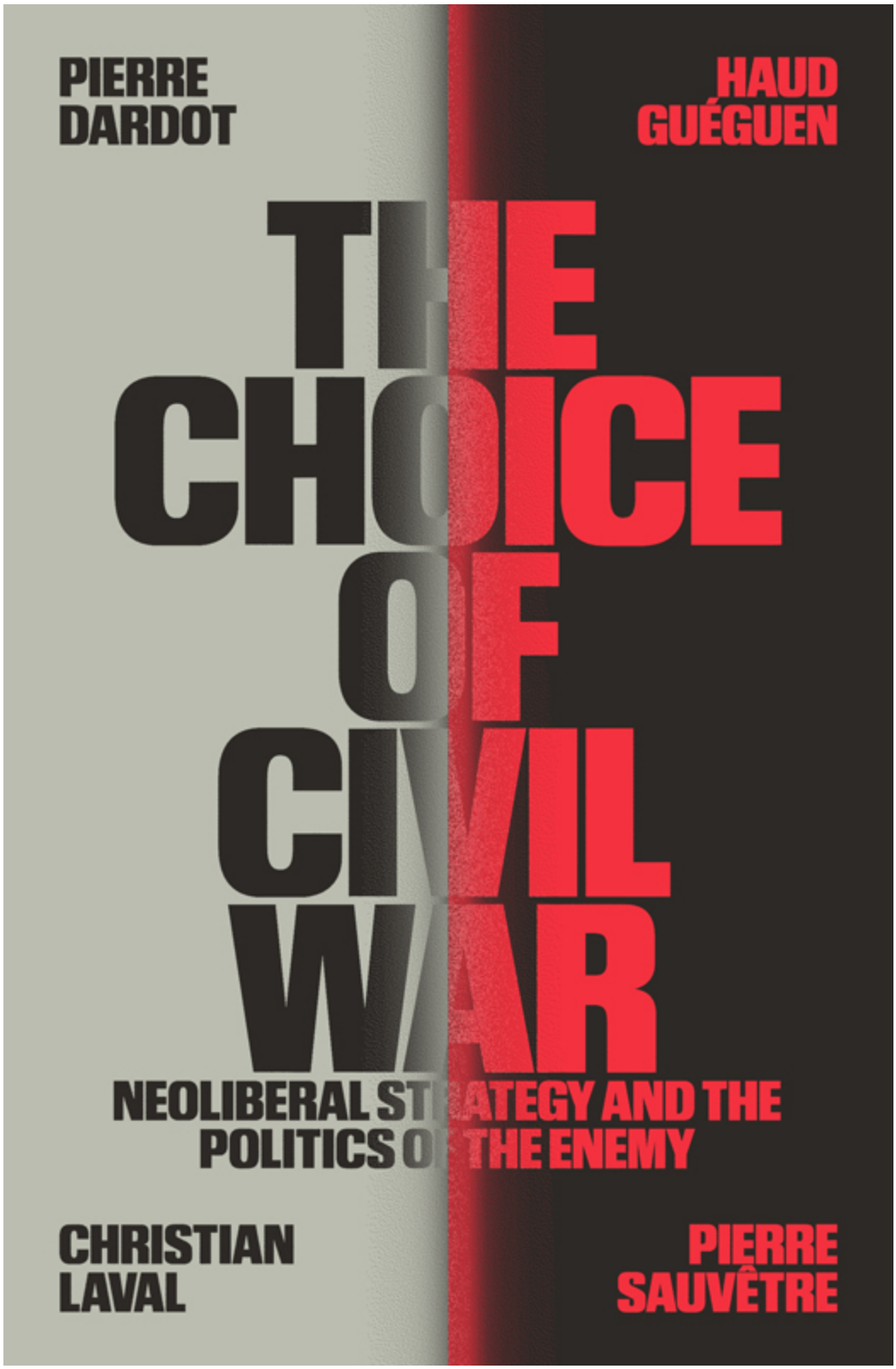
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The Choice of Civil War

Neoliberal Strategy and the Politics of the Enemy

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Translated by Andy Bliss

VERSO
London • New York

English-language edition first published by Verso 2026
First published as *Le choix de la guerre civile – Une autre histoire du néolibéralisme*
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The translation of this book was supported by the History & Political Economy Project

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1 3 5 7 9 10 8 6 4 2

Verso
UK: 6 Meard Street, London W1F 0EG
US: 207 East 32nd Street, New York, NY 10016
versobooks.com

Verso is the imprint of New Left Books

ISBN-13: 978-1-80429-618-9
ISBN-13: 978-1-80429-620-2 (US EBK)
ISBN-13: 978-1-80429-619-6 (UK EBK)

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
A catalog record for this book is available from the Library of Congress

Typeset in Minion by Biblichor Ltd, Scotland
Printed and bound by CPI Group (UK) Ltd, Croydon CR0 4YY

Contents

Preface

Foreword *by Quinn Slobodian*

Introduction

1. Chile: The First Neoliberal Counterrevolution
2. Neoliberal Demophobia
3. Apology for a Strong State
4. Political Constitutions and Constitutionalizing the Market
5. Neoliberalism and Its Enemies
6. Neoliberal Strategies for Social Evolution
7. The False Choice Between Globalism and Nationalism
8. Culture Wars and Dividing the People
9. On the Workplace Front Line
10. Governing Against the People
11. The Law As a Neoliberal War Machine
12. Neoliberalism and Authoritarianism

Conclusion: From Civil War to Revolution

Index

Preface

The present book is the fruit of reflections within the Groupe d'Études sur le Néolibéralisme et les Alternatives (GENA), an international multidisciplinary study group set up in autumn 2018 to observe and analyse the shifting nature of neoliberalism and its various strategic permutations. A historical sequence that has seen Donald Trump and Jair Bolsonaro triumph at the polls, as well as the extensive spread of nationalist, authoritarian and racist forms of government, provided the original impetus for our collective efforts to understand the role of violence in the history of neoliberalism, and its civil war dimension.

We would like to thank the following people for making this book possible by sharing their analyses, furnishing data and reading initial drafts: Matilde Ciolli; Márcia Cunha; Jean-François Deluchey; Barbara Dias; Heitor de Macedo; Massimiliano Nicoli; Nilton Ota; Simon Ridley; Tatiana Roque; Emine Sarikartal; and Rafael Valim.

Foreword

The Volcanic Base and the Archipelago

Towards the end of *The Choice of Civil War*, Pierre Dardot, Haud Guéguen, Christian Laval and Pierre Sauvetre recall an encounter between Napoleon and Goethe in 1808. ‘Why do they keep talking about destiny?’, Napoleon is reported to have asked. ‘Destiny is politics.’ The phrase persisted and was revived in the 1920s by the German industrialist Walther Rathenau, though inverted and amended: ‘The economy is destiny.’ After the Second World War, Ludwig Erhard, West Germany’s economics minister and a key figure in the rollout of an early version of German post-war liberalism, repeated it again: ‘The economy is destiny.’

This captures the common understanding of the opposition between neoliberalism and its challengers. On one side, we are told, is the ‘rule of economics’, in which unaccountable bureaucrats and algorithmically-tuned financial institutions shape our fate according to abstract principles from the social sciences. On the other side are those who refuse to be bound by market forces; who reassert the state, sovereignty and the power of charismatic leadership – the return of the unexpected. Much of what we have been told in the past decade conforms to this framing: the return of strongmen as so many mini-Napoleons, brandishing the ‘politics of destiny’ or, in Timothy Snyder’s phrase, the ‘politics of eternity’ against the merciless distributive logics of the market.

This is exactly the interpretive frame this book seeks to challenge – both because neither option provides a genuine refuge, and because the claim is empirically false. Neoliberalism is not, in fact, the embrace of the economy

as ‘destiny’. Neoliberalism, too, is Napoleonic, the authors argue. The conceptual universe from which Erhard was speaking in the 1960s was one shaped by a doctrine developed in engagement with Carl Schmitt, the Nazi jurist. In as direct a way as possible, the early neoliberals embraced Schmitt’s belief in the need to concentrate power above the feuding interests of the people – they simply insisted that the decision should be made for different ends. Both Schmitt and Friedrich Hayek believed in the fundamental difference between law (*Recht*), which sat above democratic government, and the legislation (*Gesetz*) of elected bodies, which always needed to be kept within strict bounds. They shared what the authors call a ‘demophobia’.

When Margaret Thatcher said that miners, during the mid-1980s miners’ strike, were ignoring the law of the land and thus the law of economics, she was – like Napoleon speaking to Goethe – asserting her right to interpret what ‘the economy’ was. Economic claims were subordinated to a larger political fight against socialism and organized labour. ‘A consistent leitmotiv of neoliberalism’, the authors write, ‘is to reframe the class struggle as a civil war and to situate the neoliberal state above these vested interests.’

Far from an apolitical act, the effort to make the economy into destiny is itself the highest expression of the politics of the late twentieth and early twenty-first centuries – one which, as the authors put it, ‘disguise[s] its choices as non-choices and thereby preclude[s] any alternative’. What we see now is not a pendulum swing from economy to politics but a modulation in the kind of politics being carried out.

This book is about what happens when you adopt a form of politics that refuses to acknowledge its own political status. It is about the logic of civil war – because, as the authors put it, if you deny the existence of politics as such, then what happens in the vacuum becomes decisive.

The authors’ goal is to make visible a fundamental similarity between the decision of French President Emmanuel Macron to repress the uprising of the *gilets jaunes* and the framing of internationalist and anti-racist protest as terrorist in the United States. In both cases, political leaders are caught in a bind: they continue to defend an economic order that corrodes the condition for the reproduction of society and serially coughs up symptoms of anger and frustration. As the process escalates, the symptoms are reframed from warning signs of negligent care to evidence of a foreign body within the

nation in need of containment and expulsion. A climate of ‘generalized suspicion’ makes acts of discontent illegitimate in advance.

There was a telling moment late in the 2024 US presidential campaign. As Democrats attempted to make the race about the ‘defence of democracy’, they found many voters agreeing with the sentiment but planning to vote against them nonetheless. Though this may have baffled strategists and consultants, the history told here helps explain it. As Nancy Fraser has argued, from the 1980s onwards, neoliberalism was embraced across both sides of the political spectrum. The Democratic Party prioritized standards of efficiency and growth over the principles of working-class organization and egalitarian outcomes.

Progressive neoliberalism compensated the losers of this settlement through a language of meritocracy, easy credit, and the promise of intergenerational upward mobility. Yet the authors correct Fraser by noting that the centre-left’s break with its working-class base was always shadowed by a more extreme strain of authoritarian neoliberalism. Efforts like affirmative action, the questioning of received historical narratives, and new rules against workplace harassment and discrimination were not seen as accommodations at the margins to an individualized form of lifestyle leftism that left larger economic structures untouched. Rather, they were seen as forward deployments in a war against civilization itself.

The result was a change in tactics on the right, what the authors call ‘a shift from a paranoid fear of the masses to a more cynical seduction of the population’. In 1992, the anarcho-capitalist Murray Rothbard referred to this as a move away from the ‘Hayek model’ of ‘converting the intellectual elites to liberty, beginning with top philosophers and then slowly trickling on down through the decades to converting journalists and other media opinion-molders’. The alternative was ‘Outreach to the Rednecks’. It would work from the bottom-up. ‘This two-pronged strategy’, he wrote, ‘is (a) to build up a cadre of our own libertarians, minimal-government opinion-molders, based on correct ideas; and (b) to tap the masses to short-circuit the dominant media and intellectual elites, to rouse the masses of people against the elites that are looting them, and confusing them, and oppressing them, both socially and economically.’

From Bolsonaro’s Brazil to Trump’s United States, this strategy has been deployed for a decade now. Culture war issues have been used as red meat

for angry voters while think-tankers write the blueprints for policy. As the authors observe,

> neoliberalism has not only manufactured the poison (the disintegration of social bonds, social inequality, economic insecurity), but also, in its right-wing form, proposed a fictitious antidote, namely the revalorization of an *us* consisting of simple, ordinary people: silent, hard-working peers and good citizens who obey the rules and are respectful of the state's authority.

Watching a recent documentary about the 1999 WTO protests in Seattle, *WTO/99* (dir. Ian Bell), I was reminded how much has changed in the intervening quarter century. While the clashes with police were treated at the time as a shock and even a rupture in public faith in liberal institutions, other differences stand out in retrospect – first, the fact that the protests were allowed to take place so close to the venue, and the absence of now-standard techniques like kettling. As the authors note, the escalation in violent repression against G8 summit protestors in Genoa only a couple years after Seattle tracked what would be an onward trend in the outlawing of dissent. As they state, 'The war is not only (and indeed not even) a military affair – it permeates every domain and every institution, dominating the discourse.'

The second notable moment in the documentary was an incidental news broadcast which noted that the new WTO agreement covered over 90 per cent of world trade. Because China did not join until two years later, that meant one could count 90 per cent of world trade without including China. At the time, China's share of world trade was around 3 per cent – today it's around five times as much. Its share of global manufacturing also grew five times over, now almost 30 per cent – nearly twice that of the United States. The working-class men and women in Seattle worried about losing their jobs to globalization were right. There was a moment of alliance between organized labour and young, radical activists that was lost. That partnership seems so distant now that it's heart-wrenching to see how recently it still existed.

A discussion of China does not appear once in the pages of this book – one could see China as something that disrupts the otherwise all-consuming binary of progressive and conservative neoliberalism that the authors set up. As scholars like Isabella Weber have pointed out, the question of whether China is or is not 'neoliberal' is not a helpful one. The country's economic doctrine has evolved under both internal and external influences in such a

way that the shopworn categories of civil society and state – let alone the ancient categories of *imperium* and *dominium* – are of limited application. What one can hope for in finishing this book is that we can eventually be sprung from the prison of neoliberalism locked into law – and our own frameworks of analysis.

As the authors note, the slogan of the 99 per cent against the 1 per cent, however elegant, does not capture a world where there are

> coalitions of oligarchies, who defend the neoliberal order with every state resource at their disposal (whether military, political or symbolic); the middle classes who have been won over to a progressive brand of neoliberalism and its championing of the virtue of modernization; a sector of the working and middle classes, whose resentment has been exploited by authoritarian nationalists; and finally, a grouping that is largely defined by its participation in social protest against the onslaught of the oligarchs and its attachment to an egalitarian and democratic conception of society.

But the impression of complexity can also obscure an underlying connection, as they also observe. An archipelago is connected by a submarine volcanic base between the islands. Perhaps, against its own intentions, the turn from demophobia to a partial and invidious demophilia leaves the door open to a new kind of politics as destiny. All that is clear is there is no going back.

Quinn Slobodian
September 2025

Introduction

Neoliberalism's civil war strategies

From the very outset, neoliberalism has been defined by its embrace of civil war. And this founding principle continues, whether directly or indirectly, to guide its outlook and policies today, even where no actual military means are deployed. Such is the basic argument that runs throughout this book: what is happening today, with the ever more overt recourse to repression and violence against society, is tantamount to a *civil war*. To be clear about what we mean by this, it is worth revisiting the term. Most people draw a distinction between a civil war (an internal war) and a war between states (an external war). A civil war thus means a war between citizens of the same state and equates to a situation of lawlessness, whereas the parties to an external war are bound by certain laws. When, in April 1871, Gustave Courbet demanded that the Communards be granted the status of belligerents, pointing to the example of the American Civil War, his opponents argued that 'a civil war is not a standard war'.[1] This distinction is overlaid by a second opposition between politics and civil war: whereas politics is synonymous with a suspension of violence through acceptance of the rule of law, civil war is the lawless unfurling of violence and anger – an 'inextricable tangle of fury and vengeance', to echo Thucydides.[2] But the problem with these and other oppositions is that they prevent us from seeing the *strategies* adopted by neoliberalism. Only when we jettison such binary thinking can we appreciate that politics is perfectly capable, if need be, of

deploying the most brutal violence, and that civil war can very much be waged according to the rule of law.

Distinct strategies

Chile and the United States afford two illustrations that get to the heart of the matter. On 20 October 2019, two days after riots broke out in the Santiago subway over ticket price increases, the Chilean president Sebastián Piñera lost no time in declaring a state of war in the following terms: ‘We are at war against a powerful and relentless enemy who respects nothing and nobody, and is prepared to use unbridled criminal violence.’ For Chileans listening to him, there was nothing metaphorical about his use of the word ‘war’: the army was called in to restore order and armoured vehicles reappeared on the streets of Santiago, reviving sinister memories among older citizens of Augusto Pinochet’s military coup on 11 September 1973. In the weeks that followed, the Carabineros made sure that the word ‘war’ acquired a very specific meaning: an unleashing of state violence against ordinary citizens (rapes in police stations, police vehicles deliberately driven into crowds of protesters to crush them, hundreds of demonstrators wounded or blinded by rubber bullets containing lead, and so forth).

So, what did Piñera’s ‘powerful and relentless enemy’ look like? The day of 18 October 2019 marked the start of the Chile despertó (Chile woke up) movement, when, in the space of a few days, a horizontally organized protest without political leaders assumed the dimensions of a genuinely popular revolution, unprecedented in both duration and intensity. People from every walk of life took noisy possession of public spaces and it was revealing to see feminist banners and Mapuche indigenous flags in the midst of the demonstrations. Sacrifices are continually being demanded of Chilean women in the name of traditional family values, while the Mapuche have been described as victims of an ‘authoritarian internal colonization’.[3] There can be no doubt that the war declared by Piñera is a civil war requiring a discourse that strategically conjures up the figure of the ‘enemy within’. A neoliberal oligarchy is choosing to wage war against a mass movement of citizens that is directly threatening its dominance. An omnipresent piece of graffiti summed it up: ‘Where neoliberalism was born

is where it will die.’ This was not a prediction but a performative utterance: it is up to all of us living here to put an end to a system that is incompatible with us living in dignity. It was the power of this self-organizing movement that prevented the civil war desired by the oligarchy, forced a referendum on a new constitution and ultimately translated into the victory of the ‘yes’ campaign on 25 October 2020.

But are we to assume that the neoliberal strategy of waging civil war amounts essentially to crushing a popular uprising? By no means. The spectre of civil war was arguably brandished like never before in the final weeks of the US presidential election campaign, with violent clashes occurring between white supremacists and anti-racist demonstrators in Portland and Oakland. At the time, the political commentator Thomas Friedman had no hesitation in asserting on CNN that the United States was on the brink of a second civil war. The first major demonstration took place in 2020 in Virginia, where the Democrat-majority government had pledged strict new gun control laws. Some 22,000 people, many of whom were armed, protested outside the state capitol building in Richmond, chanting, ‘We will not comply’. In April of the same year, a plot to kidnap the governor of Michigan and ‘try’ her for treason was foiled. The spectacular storming of the Capitol in Washington on 6 January 2021 merely served to expose to the public gaze a movement that was already deeply rooted in American society. These instances of violence do not constitute a classic civil conflict between two opposing armies, as was the case in the American Civil War. Rather, they reflect a profound and enduring rift between two halves of society, which has been obscured for too long by the distorting prism of the electoral battle between Democrats and Republicans, and which today constitutes a curious type of civil war. There is a temptation to cast Trump as some sort of prime mover who created this split from scratch in a society that was previously at peace with itself. But he has only revived and aggravated longstanding racial, social and cultural divisions for his own ends, not least by nodding to old Confederate tropes of slavery and racism, for example by making positive remarks about the Confederate flag and the Boogaloo Boys (who are eagerly preparing for an imminent civil war). And what is likely to have the most significant implications for the future is that he managed to unite behind him entire swathes of the country and even substantially increased his share of the vote between 2016 and 2024 (from 63 million to 74 million to 77 million). However, this polarization has only

been achieved by generating a *clash of values*: so-called ‘freedom’ versus equality and social justice, or *socialism* for short. It is this opposition that goes a long way to explaining the resentment and indeed hatred felt by a significant number of these voters. As Wendy Brown points out, the Republicans’ greatest achievement in the 2020 presidential election was to ‘identify Trump with freedom’: ‘freedom expressed in his resistance to Covid protocols, in his tax cuts for the rich, in extending the power and rights of corporations and in seeking to destroy what remained of the regulatory and social state’.[4] It is in this attachment to ‘freedom’ that Trumpism transcends the person of Donald Trump himself and makes it conceivable that Trumpism might outlive him. As the French historian Sylvie Laurent observes, the militia groups at the Capitol were not un-American elements but rather ‘part of a long tradition of white American terrorism’ underpinned and driven by nativist ideas dating back some four centuries.[5] Outside the United States too, this ‘freedom’ that is more precious than life itself was the rallying call of Bolsonaro’s supporters and of the far right in Spain, Germany and Italy at the height of the first wave of the pandemic, and it continues to be their battle cry today. The civil war against equality in the name of such freedom is undeniably one of the principal facets of contemporary neoliberalism from a strategic point of view.

But we should not attribute such neoliberal manoeuvrings exclusively to the far right. Ever since the 1980s, left-wing governments, particularly those of a social democratic bent, have waged this same war. They may often have done so in a more indirect manner, but this has nevertheless had a terrible impact on the balance of power and the scope for alternatives. They have not merely failed to defend the working classes and preserve public services – they have impoverished the former and eroded the latter in the name of pragmatism (which is to say the constraints of globalization or of European treaties, depending on the case). The nationalist neoliberalism of the radical right could never have achieved its current ascendancy and tapped into working-class resentment without the active collusion of the so-called left in the neoliberal offensive.

Civil war policies

Neoliberal civil wars can therefore assume very diverse forms and proceed from equally diverse strategies. But what role does the state play in this? And in what way do citizens confront each other, assuming that it is meaningful to speak in such terms? Is it a 'war of all against all', as Thomas Hobbes famously described it? In his collection of lectures at the Collège de France entitled *The Punitive Society*, Michel Foucault analyses the notion of civil war in relation to Hobbes's theory that it constitutes a resurgence of the state of nature. In this conception, it is a war that pre-dates the creation of the state and to which individuals return when the state collapses. To which one may object that civil war involves, and indeed gives rise to, collective elements: the protagonists are always groups as groups and not individuals as individuals. Moreover, in the kind of civil war we are considering, these collective elements do not clash in the manner of two opposing armies, as was the case for example in the English Civil War of the 1640s and 1650s. Popular uprisings in France, such as the seventeenth-century Nu-Pieds revolt, the series of riots that took place over the course of the eighteenth century and the more recent *gilets jaunes* protests, provide good illustrations. And finally, contrary to official rhetoric, civil war is not that which threatens governments from the outside. It is what 'occupies, traverses, animates, and invests power through and through', since 'to exercise power is to conduct civil war'.[6] Civil war can thus be seen as a 'matrix within which elements of power come to function, are reactivated, break up', and from this point of view, far from putting an end to war, 'politics is the continuation of civil war'.[7]

Although the civil wars of neoliberalism are being waged on several fronts simultaneously, and although the stakes are the domination of the oligarchies on a global scale, they cannot be said to merge into a single war that would automatically have the entire world as its stage and battlefield. For this reason, we will avoid the term 'global civil war', coined by Carl Schmitt and used by him in a very different sense. In his view, the *Weltbürgerkrieg* of the mid-1940s signalled the end of the interstate wars of the post-Westphalian world and the advent of *asymmetric wars* waged in the name of an ideal of justice, which has enabled superpowers to exercise a police power within an updated framework of international law, informed by missionary impulses.[8] For Hannah Arendt, by contrast, the term refers to

wars waged between totalitarian regimes (Nazism and Stalinism), which, despite their strong similarities, cannot avoid direct confrontation due to their expansionist ambitions – a line of reasoning that was later developed by Ernst Nolte in *The European Civil War 1917–1945: National Socialism and Bolshevism*. Other authors, including Eric Hobsbawm in *The Age of Extremes*, have adopted the term to describe the international confrontation between fascism and the progressive heirs of the Enlightenment.

But when we talk of neoliberalism's 'civil wars' in this book, we mean something very different. The first characteristic of these wars instigated by the oligarchy is that they are *total* wars: social, in that they aim to erode people's civil rights; ethnic, in that they seek to exclude foreigners from any form of citizenship (not least by imposing ever more stringent criteria for asylum); political and legal, in that they introduce laws to criminalize and repress any form of resistance or contestation; and cultural and moral, in that they attack individual rights in order to defend a highly conservative moral order (often underpinned by Christian values). The second characteristic is that they employ distinct strategies. These may be mutually reinforcing and sustaining, but they do not give rise to a unified global strategy (of which local and national strategies are mere regional variants). And the third is that they do not involve a direct confrontation between a *global order* of the imperial type (even if it is a hegemony) and a people conceived of as a monolithic entity, and neither do they involve a confrontation between one political or economic system and another. Instead, they involve a confrontation between a coalition of oligarchies and certain sectors of the population, with the active support of other sectors of that population. This support can never be taken for granted, however – it must continually be secured anew by exploiting existing divisions, particularly the most deeply rooted ones. It is in this respect that these strategies resist any binary analysis. The civil wars of neoliberalism are *civil* precisely because they are not a clash between the '1 per cent and 99 per cent', as the familiar but erroneous slogan would have it. Rather, they pit various groups against one other (reinforcing the group identities in the process), based on fault lines that are much more complex than mere social class. There are the coalitions of oligarchies, who defend the neoliberal order with every state resource at their disposal (whether military, political or symbolic); the middle classes who have been won over to a progressive brand of neoliberalism and its championing of the virtue of modernization;

a sector of the working and middle classes, whose resentment has been exploited by authoritarian nationalists; and finally, a grouping that is largely defined by its participation in social protest against the onslaught of the oligarchs and its attachment to an egalitarian and democratic conception of society (and whose membership includes a significant number of people from ethnic and sexual minorities, as well as women).

Indeed, it seems that the dominance of neoliberalism has completely altered the rules, focus and terrain of confrontation. One after another, states have been rallying to the banner of global capital and, in order to protect that system against the clamouring for equality and social justice, they are using every emotive trick in the book to divert people's attention instead to the purported enemy within or without, to troublesome minorities and to groups who pose a threat to the dominant classes or traditional hierarchies. In this way, the contestation of the global order has been hijacked by those who are its principal beneficiaries. By brandishing the banner of national identity and the 'economic nationalism' so dear to Steve Bannon, the radical right has succeeded in channelling the anger of entire swathes of the population, as evidenced by the Brexit referendum, the elections of Trump and Bolsonaro, and Matteo Salvini entering the Italian government in 2018. This conception of the national interest, which supposedly coincides with the interests of blue-collar workers, is bound up with the promotion of the conservative values of family, tradition and religion. The denunciation of global elites is of a piece with the fantasy narrative of the erosion of cultural identity. And yet, this economic nationalism is not so much about rejecting free trade as bolstering the sovereignty of the nation-state and thereby affording it all the levers it needs to wage an international economic war that is in its best interests. Behind its criticisms of cultural globalization, the radical right is, in fact, a willing player in the global economic marketplace, notwithstanding all its nationalist and protectionist posturing. This new configuration cannot therefore be reduced to misleading oppositions between globalists and nationalists, or between open liberal democracy and populist illiberal democracy, since these two camps are in truth two versions of neoliberalism. The reconfiguring of the conflict has ultimately enabled neoliberalism to saturate the ideological and political landscape by masking what these versions have in common: the same commitment to defending the global economic order, an anti-democratic system and a concept of freedom that boils down to the liberty to do business and consume, as well

as a determination to assert the supremacy of Western values (a facet of Trumpism that transcends Trump himself).

Adaptive strategies

Several interpretations of this seemingly new state of affairs have been put forward. For some, the emergence of an authoritarian, nationalist, populist and racist hard right is a ‘monstruous’, Frankenstein-like divergence from the original neoliberalism of Friedrich Hayek, Milton Friedman and the German ordoliberals, which was centred on defending the free market and traditional morals.[9] For others, contemporary state violence reflects the ‘tipping over into a different type of governance’ that is completely at odds with the essentially ‘pastoral’ logic of adapting to the modernity that is supposedly at the core of neoliberalism, all of which should be interpreted as an acknowledgement of its own failure.[10] And still others believe that the current resurgence of an authoritarian version of neoliberalism dates all the way back to the 1930s and is the ‘expression of its political weakening’ and of a ‘hegemony in an advanced state of crisis’.[11] In each case, contemporary forms of neoliberalism are seen as corrupt or degenerate – the sign of a model in crisis or indeed in ‘ruins’, according to Wendy Brown. However, when viewed through the prism of its strategies, neoliberalism has always been caught up in a web of relations (whether friendly or antagonistic) with other political rationales, and so from the outset has felt obliged to designate enemies and to come up with the most effective ways of implementing its offensive. To do justice to this strategic dimension of neoliberalism, we need to look afresh at its historical origins and illustrate how strategy has been at its core from the very beginning. This much was made clear in Louis Rougier’s opening address at the Walter Lippmann Colloquium, in which he took stock of the ‘theoretical and practical, strategic and tactical problems that the return to a revised liberalism . . . presents’ and stressed that this was not merely an ‘academic task’ but involved entering the ‘messy fray to fight there with the weapons of the mind’.[12] As Hayek himself emphasized, the effectiveness of the neoliberal strategy initially involved ‘waging the war of ideas’ and counting on a whole range of intellectuals, journalists, politicians and think-tanks to act as ‘second-hand dealers in ideas’ on the ideological battlefield.[13] Envisaged as

an economic and political *project*, neoliberalism was originally a response to the regulating of the economy and free market in the 1920s, itself the result of universal suffrage and the success in free elections of social democratic parties, who opted for centrally planned economies when in government. The crux of the matter was that democracy, in politicizing the economy, was seen as a threat to the free market. From the late 1920s to the late 1940s, the theoretical edifices of Ludwig von Mises, the ordoliberals, Hayek and Lippmann were thoroughly haunted by this problem. What neoliberals refused to accept, perceiving it as a pathology of society, was that the masses could come together (not least within the legal framework of democratic elections) and call into question the self-regulating free market. It was not the 'experience of Nazism' that led the ordoliberals to define their 'field of adversity', seeing in it every form of anti-liberalism (protectionism, state socialism, the planned economy and Keynesian interventionism).[14] What actually motivated the project of overhauling liberalism was the experience of social democracy in Austria and the Weimar Republic in Germany. In other words, it was a dread of the welfare state, which the ordoliberals were quick to characterize as a 'total state',[15] with its deliberate overtones of 'totalitarian'. Far from seeking to offer a social security net, a neoliberal state is dedicated to constructing the market and protecting it from the threat of regulation and control by a government that abuses its prerogatives. But to accomplish this mission such a state has constantly to remain on a war footing so as to prevent democracy from encroaching upon the economy. Given that a constructivist dimension has been attributed to neoliberalism in its shaping of an economic order based on competition, we need to afford due recognition to the civil war strategies employed by neoliberal governments against anything that might threaten free society. This includes socialist governments and parties, as well as trade unions and any kind of social protest movement, whether its demands be economic, environmental, feminist or cultural. It is essentially a two-pronged offensive that involves establishing a strong state and at the same time repressing any protest movement or entity that is opposed to this project.

As we have shown, to point to signs of 'ambivalence', 'failure' or 'crisis' when neoliberal governmentality assumes both constitutional forms *and* direct forms of state repression is to overlook the underlying strategic consistency of neoliberalism – namely, that it fully embraces the necessity,

at least in certain situations, of resorting to violence.[16] It should be stressed, however, that neoliberal violence is not the same as the fascist violence directed at a fifth column within the nation (though it might seek to exploit the same emotions); its distinguishing characteristic is that it is a *conservative violence of the market order* acting against democracy and society.[17] Neoliberals are convinced that what is really at stake with the market order is not so much the choice of a particular set of economic policies but civilization itself, which in their eyes should essentially be founded on the individual freedom and responsibility of the citizen-cum-consumer. And it is precisely because free society supposedly rests on this foundation that the state, with all its prerogatives, still has an eminent role to play. Indeed, it has a duty to use the most violent means (and those that most contravene human rights) should the situation demand it. In this respect, the competitive market functions as the equivalent of a categorical imperative that justifies even the most excessive measures, including recourse to military dictatorship if necessary, as was the case in Chile in 1973. It is this fixed constant in neoliberal thinking that paradoxically accounts for its strategic flexibility. It explains why at certain junctures in history neoliberalism has associated itself with the advent or restoration of liberal democracy, but also why, when there appears to be an existential threat to the market order, it has embraced the most authoritarian political forms and the concomitant violation of the most basic individual rights. It has never made any bones about opting for the latter scenario. In a 1997 article entitled ‘What Latin America Owes to the Chicago Boys’, Gary Becker does not beat about the bush: ‘In retrospect, their willingness to work for a cruel dictator and start a different economic approach was one of the best things that happened to Chile.’[18]

An alternative history of neoliberalism

The goal of this book is to tease out the strategies on which neoliberalism has relied from the very outset to implement its project of a pure market-centred society. To revisit neoliberalism through the prism of its strategic rationale and its inherent violence is to depart from a theoretical interpretation centred purely on its ideological doctrines in favour of an analysis of how it functions on the ground, where what counts is imposing

its social and political dominance. It is true that ‘neoliberalism’ has become something of a catch-all term these days and can therefore create confusion. It is easy enough to ascertain (as many a scholar has dutifully done) that ever since the 1920s and 1930s there have been epistemological and ontological divergences between the various strands of thought that we retroactively classify today as neoliberal. But a pedantic (and ultimately sterile) history of these ideas would again miss the point: namely, that neoliberalism is not merely a set of theories, authors and works, but a political project to neutralize socialism in all its forms and, more broadly, any and all demands for equality. The theoreticians and essayists defending the project have, from the outset, also been *policy entrepreneurs*. Their project is born out of a shared political determination to establish a free society founded principally on competition and a body of private law and explicit principles that are upheld by sovereign states and grounded in morality, tradition and religion – the underlying strategy being the comprehensive overhaul of society.[19] In other words, neoliberalism (like socialism and fascism) should be understood as a strategic struggle against other political strands, which tend to get lumped together rather crudely as *collectivist* projects. Neoliberalism involves imposing certain modes of operation on society, first and foremost of which – *for every type of neoliberal* – is the principle of competition, which is supposed to ensure the sovereignty of the individual-cum-consumer. Only this strategic and conflictual dimension of neoliberalism can account for how it arises and persists, and for the impact it has on the whole of society.

This dimension also reveals a marked confluence in the political objective pursued by these doctrines, which means we can indeed talk about a *single* political rationale that is clearly identifiable, rather than of various strands of neoliberalism in the plural.[20] This ‘market order’ to be defended or restored can be conceptualized in various ways: as a spontaneous order, for example, that needs consolidating through a legal framework (Austrian-American neoliberalism influenced by Hayek) or as an order deliberately constructed by lawmakers according to certain values (German ordoliberalism).[21] But, above and beyond these differences, all neoliberals are convinced that political action alone can bring about and defend such a social order. This was the basis of the accord that was formulated for the first time at the Walter Lippmann Colloquium in 1938 and for the second time with the founding of the Mont Pelerin Society in 1947. All the major

subsequent battles of political neoliberalism have been consistent with this accord, and all neoliberals have denounced the welfare state and waged a relentless war against socialism and communism.[22]

In focusing on this strategic accord, however, we do not mean to reject other ways of writing the history of neoliberalism, particularly those inspired by Foucault's analysis. In the early 2000s, commentators tended to emphasize the originality of neoliberalism's overall approach, which is to say the way it turns everything into a competition between companies, institutions, individuals and countries. This genealogy served to give the lie to interpretations of neoliberalism that presented it as an extreme form of liberalism where no rules applied (the so-called law of the jungle), a return to the naturalism of Adam Smith or the re-establishment of a supposedly pure form of capitalism that had finally been distilled down to its essence. And perhaps most importantly, it served to highlight the interventionist nature of neoliberalism: an interventionism geared towards creating and maintaining the *legal underpinning* that is indispensable to the market order. Where it went astray, however, was in underestimating its radically anti-democratic nature and creating the impression that neoliberal governmentality could come about peacefully through a series of reforms, modest breakthroughs and some gentle tweaking – a process of tentative experimentation that ends up giving rise to a system. In view of recent developments in neoliberalism, this genealogy clearly overlooked the naked violence with which it may impose itself under certain circumstances.[23]

This is where the present book comes in: its aim is to add an essential chapter to existing genealogies by taking into account increasingly brutal forms of the neoliberal agenda. What this approach reveals is not a new or indeed degenerate form of neoliberalism, but the darker side of its history, guided by an implacable dogma that does not stint on the resources deployed to weaken, and if possible crush, its enemies.[24] Of the three meanings of the word 'strategy' identified by Foucault, it is therefore the third that is the most pertinent here, subsuming as it does the other two: 'the procedures used in a situation of confrontation to deprive the opponent of his means of combat and to reduce him to giving up the struggle'.[25] This strategic identification of the enemy always goes hand in hand with a radically anti-egalitarian utopia, which is the flipside of the competition coin.[26] Already at the Walter Lippmann Colloquium, the ordoliberal Alexander Rüstow launched a frontal attack on demands for equality, which

he viewed as the ‘pathological symptoms’ of his age: ‘Instead of, notably, replacing the artificial and forced stratification of feudal seigneury with voluntary and natural hierarchy, one threw out the good and the bad, one denied the principle of stratification in general and one put in its place the false and erroneous idea of equality.’[27] The message is crystal clear: neoliberalism is at once a war *for* competition and *against* equality.

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1 Nicole Loraux, *La tragédie d’Athènes. La politique entre l’ombre et l’utopie*, Le Seuil (La librairie du XXIe siècle), 2005, p. 55. Adolphe Thiers, for his part, compared the National Guard during the Paris Commune to the Confederacy during the American Civil War.

2 Ibid., p. 83.

3 This description from Esteban Radiszcz, a psychoanalyst and lecturer in the Social Sciences Faculty at the Universidad de Chile in Santiago, is intended to capture a specific trait of Chilean neoliberalism: namely, how colonial domination has been extended through internal colonization.

4 Wendy Brown, ‘Trumpism and the Spectre of Socialism. On the US Election’, *Feministische Studien*, 7 November 2020 (blog.feministische-studien.de).

5 Sylvie Laurent, cited in a Romain Jeanticou article in *Télérama*, 8 January 2021 (telerama.fr).

6 Michel Foucault, *On the Punitive Society: Lectures at the Collège de France 1972–1973*, trans. Graham Burchell, Palgrave Macmillan, 2015, pp. 31–2.

7 Ibid. Regarding this inversion of Carl von Clausewitz’s celebrated aphorism, see also Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France 1976*, trans. David Macen, Picador, 2003.

8 See Enzo Traverso, *Fire and Blood: The European Civil War, 1914–1945*, trans. David Fernbach, Verso, 2016. Traverso draws on Schmitt in his analysis of the 1914–45 period, arguing that the violence assumed an absolutist dimension: the enemy was denied any form of legitimacy in order to justify its annihilation.

9 Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West*, Columbia University Press, 2019.

10 Barbara Stiegler, quoted by Joseph Confavreux in ‘Le virus risque de permettre au néolibéralisme de se réinventer’, *Mediapart*, 27 August 2020.

11 See Grégoire Chamayou’s introduction to Hermann Heller and Carl Schmitt, *Du libéralisme autoritaire*, La Découverte, 2020, p. 82.

12 ‘Address by Professor Louis Rougier’, Jurgen Reinhoudt and Serge Audier, *The Walter Lippmann Colloquium – The Birth of Neo-Liberalism*, Palgrave Macmillan, 2017, pp. 101–2.

13 For more on this subject, see John Blundell, *Waging the War of Ideas*, Institute of Economic Affairs, 2015 (4th edn). The IEA is a think-tank originally founded by Antony Fisher and Ralph Harris to disseminate Hayek’s ideas.

14 Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, Palgrave Macmillan, 2010, p. 106.

15 We will return to the various meanings of this expression in Chapters 3 and 12.

16 Translator’s note (TN): *gouvernementalité* is a term coined by Michel Foucault to denote the ‘organized practices (mentalities, rationalities, and techniques) through which subjects are governed’ (wikipedia.org/wiki/Governmentality).

17 See Chapter 3.

18 Gary S. Becker, ‘What Latin America Owes to the Chicago Boys’, *Hoover Digest*, no. 4, October 1997.

19 Wilhelm Röpke writes in *The Social Crisis of Our Time* (trans. Annette and Peter Schiffer Jacobsohn, University of Chicago Press, 1950, p. 181) that competition is ‘not a principle on which a

whole society can be built', but this does not mean that it is not the 'paramount' foundation.

20 Serge Audier, for example, approaches neoliberalism as a plural concept in *Néo-libéralisme(s). Une archéologie intellectuelle*, Grasset, 2012.

21 In *Wettbewerb als Aufgabe* (Competition as Task), his postdoctoral thesis published in 1937, Leonhard Miksch discusses 'state-organized competition' – a typically neoliberal concept.

22 The ordoliberals made a concerted effort in 1948 to persuade the German authorities in the Anglo-American Bizone to liberalize prices and reform the currency. The first edition of their yearbook, the combative manifesto for ordoliberalism, *ORDO*, published a major text of social philosophy by Hayek by way of an introduction: 'Der Wahre und falsche Individualismus' (Individualism: True and False), *ORDO*, no. 1, 1948.

23 To cite just two examples, there was Margaret Thatcher's savage repression of the miners' strike (1984–85) and Ronald Reagan's mass firing of air traffic controllers who had gone on strike in 1981.

24 See Chapters 3 and 5.

25 Michel Foucault, 'The Subject and Power', in Hubert Dreyfus and Paul Rabinow, *Michel Foucault Beyond Structuralism and Hermeneutics*, University of Chicago Press, 1983. The first two definitions are: 'the means employed to attain a certain end'; and 'the manner in which a partner in a certain game . . . seeks to have the advantage over others'.

26 On this subject, see Chapter 6.

27 Reinhoudt and Audier, *Walter Lippmann Colloquium*, pp. 159–60.

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Chile: The First Neoliberal Counterrevolution

And there were strikes and the colonel of a tank regiment tried to mount a coup, and a cameraman recorded his own death on film, and then Allende's naval aide-de-camp was assassinated and there were riots, swearing, Chileans blaspheming, painting on walls, and then nearly half a million people marched in support of Allende, and then came the coup d'etat, the putsch, the military uprising, the bombing of La Moneda and when the bombing was finished, the president committed suicide and that put an end to it all.

Roberto Bolaño, *By Night in Chile*[1]

It was a strategic victory for imperialism which not only served to undo the many social gains during these thousand days but also transformed Chile into a laboratory for a neoliberal form of capitalism that was still unknown in other climes. This small southern country was to be the first to experience its prescriptions, courtesy of the 'Chicago Boys'. The 17 years of dictatorship that ensued after 11 September 1973 have been described by Tomás Moulian and Manuel Gárate as a 'capitalist revolution', so thoroughly was society reshaped by the junta. But in fact it was a counter-revolution, in the strictest sense of the term.

Franck Gaudichaud, *Chili 1970–1973*[2]

On 11 September 1973, the coup d'état led by General Pinochet with the active support of Richard Nixon and the Central Intelligence Agency (CIA) put an end to the Popular Unity experiment that had begun with Salvador Allende's election victory in 1970. On 10 December 1974, fifteen months later, Hayek accepted the Nobel Prize in Economics, and three months after that, on 11 February 1975, Margaret Thatcher met Hayek for the first time. Having just emerged victorious from the Conservative Party leadership election, she crossed the road from Parliament to Lord North Street and the

offices of the Institute of Economic Affairs (IEA), ‘the oldest and doubtless the most influential of British neoliberal think tanks’.[3] According to some witnesses, the meeting lasted less than half an hour. Adopting the demeanour of a ‘meek schoolgirl’, Thatcher uncharacteristically remained silent for some ten minutes while Hayek set out his arguments.[4] So, what narrative should we tease out of these three events?

The general, the Nobel Prize winner and the Iron Lady

Three protagonists played starring roles in what one would have to call the opening act of neoliberal government: the general, in the person of the dictator Augusto Pinochet; the Nobel Prize winner in the person of Friedrich Hayek; and the Iron Lady in the person of Margaret Thatcher (though she had yet to acquire that sobriquet). In this curious scene, the second of these played an unusual role, transcending his status as an economic theorist to become something more akin to a political guru.

One notable incident gives a flavour of how Hayek’s political stance towards the Chilean junta was perceived. He shared his Nobel Prize with his rival Gunnar Myrdal, whose Keynesian outlook could not have been more different to his own.[5] At the awards ceremony in Stockholm, the two economists were about to be greeted by the king when Helene Hayek suddenly raised her voice; some cross words (‘me first’, ‘shame on you’, ‘fascist’, ‘socialist’, ‘Pinochet’) were being exchanged between the two wives. Alva Myrdal’s allusion to Pinochet was pointed: Hayek had refused to condemn the general’s coup, for which Gunnar Myrdal took him to task later on in the evening, at least according to one imaginative reconstruction of their conversation.[6] When, the day after the Paris Heads of State or Government of the Nine Summit of 9–10 December 1974, Hayek predicted the transformation of Europe into a ‘land of serfdom’, Myrdal drily retorted: ‘Your Chilean friends certainly know a thing or two about how to impose serfdom.’[7]

Hayek himself was happy enough to cite the example of his ‘Chilean friends’ to Margaret Thatcher. And John Ranelagh recounts a famous anecdote of a Conservative Party policy meeting in the mid-1970s at which one of the participants began arguing for a ‘pragmatic path’. Before he could finish, Thatcher reached into her briefcase and ‘slammed’ a copy of

Hayek's *The Constitution of Liberty* down on the table, declaring sternly: 'This is what we believe.'[8] In August 1979, Hayek wrote to Thatcher of the pressing need to address the 'problem of trade union policy', potentially through a referendum.[9] He also urged her to cut public expenditure and balance the budget in one year rather than five. He expressed his unhappiness, too, about the influence of Milton Friedman's monetarism on government thinking and argued that interest rates should be increased further to eliminate inflation immediately, regardless of the price paid in terms of bankruptcies and job losses. Lastly, he encouraged her to cleave more closely to the example of Chile. Thatcher replied that such a rapid adjustment would not have been viable on account of its social impact and that, on account of Britain's democratic institutions, 'some of the measures adopted in Chile are quite unacceptable'.[10] But this disagreement did not prevent Thatcher from declaring in the House of Commons in March 1981: 'I am a great admirer of Professor Hayek. Some of his books are absolutely supreme – *The Constitution of Liberty* and the three volumes on *Law, Legislation and Liberty* – and would be well read by almost every honourable Member.'[11] A month later, the same Professor Hayek declared in an interview with *El Mercurio*, a Chilean newspaper that supported the Pinochet dictatorship: 'As you will understand, it is possible for a dictator to govern in a liberal way. And it is also possible for a democracy to govern with a total lack of liberalism. Personally, I prefer a liberal dictator to democratic government lacking liberalism.'[12] It is clear from this handful of quotations that, for many years, Pinochet's Chile was a constant political reference point, whether for the purposes of criticism (as with Alva Myrdal in 1974) or to support a theoretical stance (as with Hayek in *El Mercurio* in 1981). Why does it occupy such an important place? What significance does the 1973 coup hold for neoliberalism? To answer this question, we need to specify what strand of neoliberalism we are talking about. That of Friedman rather than Hayek, who, as we have seen, was critical of his rival's monetarism? Aside from the divergences between these two neoliberal theoreticians, should we abandon attempts to identify a consistent ideology on the part of the junta, given the diversity of the schools of thought that influenced it? If, instead of analysing its outcomes, we look at how it started out – at the preparations and the ideology that drove its instigators – then nothing would enable us to predict the course that

economic and social policy was later to take. The point of view of the actual protagonists and eyewitnesses is therefore invaluable.

The coup d'état: preparations and the role of imperialism

For certain close observers, the victory of Popular Unity seemed to announce the start of a new cycle in Latin America, marking the end of the period of continental guerrilla warfare that had shaped the outlook of the new revolutionary generation in Europe. At the end of the 1960s, the strategy of *foco* guerrilla warfare was still viewed as a practical alternative to the electoral path of incremental political change.[13] For Maurice Najman, who spent time there in 1973, Chile shook things up by harking back to the Bolshevik Revolution of October 1917 and in particular to the 'dual power' set-up: Allende's legal government on the one hand; and the autonomous organs of popular power on the other.[14] But his reading of the situation, in which he was not alone, overestimated the maturity of these nascent organs, believing them to be capable of resolving the 'issue of forming an alternative political governance to Popular Unity'. This 'exaggerated idea of the strength of popular power organs' also led him to predict swift armed resistance to the coup, erroneously as it turned out.[15] So, what was the truth of the matter?

Franck Gaudichaud distinguishes three phases – what he calls 'three shuddering intakes of breath' – of Chilean popular power.[16] The first runs from Allende's election to the strike led by the opposition and employers in October 1972. Popular participation during this phase was predominantly institutionalized, which is to say it was 'driven and guided by the state'. The second phase runs from the strike up until June 1973 and was characterized by the 'emergence of organisations independent of the government', such as the *cordones industriales* and the *comandos comunales*.[17] The third sequence stretches from the failed putsch of 29 June 1973 (El Tancazo) to the coup of 11 September. The *cordones industriales* demonstrated their capacity to mobilize workers but, according to Gaudichaud, they were devoid of any 'permanent democratic organization based on delegates elected by an assembly', were poorly coordinated and were rarely able to make their influence felt beyond the local level. In his view, it would

therefore be highly misleading to view them as Chilean-style soviets, as Najman did.[18]

In fact, ‘one of the great lies of the military junta’ was that the left was well prepared militarily to mount its own coup d’état.[19] Contrary to the assertions in *El Mercurio* editorials and *El Libro Blanco*, a work of propaganda published by the junta in 1973, the existence of a *cordones industriales* army was a complete myth. The pretext for the military coup was Allende’s intention to announce on the evening of 11 September a constitutional referendum in the hope of stabilizing the government until the presidential election of 1976. But the real (and only) coup d’état had already been meticulously prepared. During the truck owners’ strike of July 1973, a movement that was exploited by the opposition, there were daily attacks and acts of sabotage, with the *cordones industriales* being a priority target. But worse still was the Arms Control Act passed on 20 October 1972 with the support of the parliamentary left. This opened the door for army officers to begin the repression, as they now had wider powers to track down illegal arms. The upshot was ‘a sort of counter-revolutionary war *sui generis*, waged unilaterally against popular power bases *even before the coup d’état*’.[20] And yet, right up until 8 a.m. on 11 September, Allende remained confident of General Pinochet’s loyalty. Contrary to the countless rumours that spread around the world straight afterwards, there was no mass armed uprising of Chilean workers against the putschists. In particular, ‘apart from a few brave but sporadic responses, the *cordones industriales* stood passively by on 11 September 1973’.[21]

Despite this, one is immediately struck by the scale of the *state terror* that rained down on left-wing militants and union leaders. Not content with imposing martial law, dissolving Congress and suspending the constitution and all party-political activity, Pinochet gradually introduced a transnational dimension to the repression in conjunction with other military regimes in the region and with the backing of the US administration, via Operation Condor. The role played by imperialism was a ‘*major* factor’ in the Chilean tragedy, to quote Gaudichaud again.[22] The coup was methodically prepared with a destabilization campaign conducted by the Nixon administration:

> Over $8m was spent in the space of three years to finance media outlets (in particular *El Mercurio*) and influence public opinion, opposition parties (especially the Christian Democratic Party to ensure it rejected any compromise with Allende), and to a lesser extent

> private sector business organizations that were hostile to Popular Unity. And on top of this, there was the economic pressure piled onto Chile, the contacts established with the coup plotters, and the logistical support of the CIA: this 'secret obscenity' of recent history needs to be taken into account in any conversation on the end of the 'Chilean path'.[23]

The facts are now well established and documented. The US administration adopted this policy in an international context that was still defined by the Cold War, when direct military intervention was still frequent (the Vietnam War only ended in 1975). But decisive though it was, the role played by imperialism is not on its own enough to explain the direction taken by the junta from 1975 onwards, and it is worth taking some time to ascertain what motivated this change of tack.

The junta's ideology and change of direction in 1975

The junta's doctrine as set out in a collectively authored book called *Nuestro camino*, published in 1976, identifies three currents of thought that were woven together in two separate phases. First, there were the ultra-conservative philosophical influences from Europe, and in particular from the French philosophers Joseph de Maistre and Louis de Bonald (monarchists who were vehemently opposed to the French Revolution) and the Spaniards Juan Vázquez de Mella (founder of the Partido Católico Tradicionalista in 1919) and the writer and politician Juan Donoso Cortés. The latter two were among the thinkers who would later influence Francoist Spain. This ultra-conservative current of thought was especially associated with Jaime Guzmán, an Opus Dei member, advisor to the dictator and leading light of the Gremialist movement (from the Spanish *gremio*, meaning 'guild' or 'employers' association').[24] Second, the doctrine of national security was designed to legitimize the concentration of powers within the hands of the junta: the coup was presented as an act to preserve the integrity of the nation in a time of war and in the face of a mortal enemy, invariably designated as communism or Marxism. Both these strands of thought were in evidence prior to the coup in the virulent criticism of the Allende government, and a third component – neoliberalism – was subsequently bolted on. This came in the shape of the Chicago Boys, so named because they had studied monetarism in the Department of Economics at the University of Chicago. In fact, this current had already

gained a certain sway in the country following the partnership agreed in 1955 between the Universidad Católica in Santiago and its Chicago counterpart, but in the years that followed its political influence was very much restricted to a few minority circles. That all changed with the election of Allende, and a review called *Que Pasa*, founded in 1971 by hardline right-wing Catholic intellectuals, which played an appreciable role in preparing the ground.[25] It was only in April 1975, however, that the junta adopted its radical plan to profoundly transform the full gamut of social relations.

We would be ill-advised to assert a continuity – whereby the junta was won over from the outset by the tough approach proposed by the Chicago Boys – as Naomi Klein does when she claims that for 'the first year and a half, Pinochet faithfully followed the Chicago rules'. This amounts to conflating two distinct phases, though she does acknowledge some nuance:

> From the start, there was a power struggle within the junta between those who simply wanted to reinstate the pre-Allende status quo and return quickly to democracy, and the Chicago Boys, who were pushing for a head-to-toe free-market makeover that would take years to impose.[26]

On closer inspection, it is clear enough that the 'gradualist policy' followed between 1973 and 1975 by a team of economists close to the Christian Democratic Party was intended to stabilize the macro-economic variables through a programme of restrained austerity that would not undermine the pillars of 'national developmentalism' that had existed for half a century.[27] As of 1974, dissension emerged between the gradualist and the radical economists, but it was only in April 1975, against a backdrop of open crisis, that the true turning point came with the adoption of an 'economic recovery programme' through which Pinochet assumed greater control of a domain – the economy – that had been entrusted to the navy straight after the coup. In the process, he asserted his authority over Admiral Merino.[28] The appointment of Sergio de Castro to the key post of economy and finance minister and the entrusting of central positions to other members of the group sealed the alliance between the Chicago Boys and the junta leader. Convinced that price stability was the fundamental element in any successful market economy, they turned their backs on the gradualist approach of the first two years and opted resolutely for a programme of 'creative destruction', in the words of Marcus Taylor. His use of the term

(distinct from that of the Austrian economist Joseph Schumpeter in 1942) refers to the state's enactment of a deliberate strategy of social engineering with a view to destroying the institutions that until then had provided the framework for social relations. For Taylor, despite all the rhetoric about a market-led process, the neoliberal programme of social destruction was founded on systematic state interventions aimed simultaneously at reshaping social institutions and easing political and social tensions occasioned by this restructuring.[29] The implementation of such a programme would have immediate consequences by destroying whole swathes of industry, putting large numbers of workers out of a job and causing wages to tumble. On top of this, state policy shifted to 'prioritise capital in its money-form rather than capital as production', which brought about a 'profound alteration in the relationship between domestic accumulation and global capital'.[30] And, lastly, through laws passed in 1978 and 1980, the regime introduced the *Plan Laboral*, a new labour code aimed at restructuring relations between the state, capital and labour. This restored some union rights under strict conditions, while at the same time encouraging the creation of rival unions within each company so as to hamper workers' efforts to organize themselves collectively. Between 1978 and 1982, a set of reforms known as the 'seven modernizations' imposed partial or total privatizations, encompassing domains as diverse as labour law, pensions, health, education, justice, agriculture and regional devolution. Meanwhile, the new constitution was promulgated in 1980, its main purpose being to create legal blocks to any future attempts to alter the course of government policy.

The 'booby-trapped' 1980 constitution

Prior to the coup, Chile had only had three constitutions, dating from 1818, 1833 and 1925 respectively. Just over half a century later, on 11 September 1980 (seven years to the day since the putsch), a new constitution was approved by referendum and remains in force today. Responsibility for drafting it was entrusted to Jaime Guzmán, who oversaw the work of the commission of experts appointed by the junta. In order to justify the powers that the junta had arrogated for itself, Guzmán drew on the concept of constituent power developed by Carl Schmitt, according to which a

constitution is only valid if it is a manifestation of a nation's right to exist (*Existenzberechtigung*) and to defend itself in the face of an enemy threat.[31] Applied to Chile in 1973, this right was claimed by the military, which declared itself unbound not merely by individual statutes (*legibus solutus*) but by the law in general (*jure solutus*) and therefore entitled to draft a new constitution. Decree Law No. 128 transferred the constituent power of the people to the junta, which claimed that the will of the nation had been thwarted by the 1925 constitution. It is clear from the constitutional texts produced by the junta and the discussions within the commission of experts that it was the military's intention from the outset to destroy that constitution. Decree Law No. 128 expanded the prerogatives accorded to the junta by Decree Law No. 1 of 1 September 1973 (in which it assumed 'supreme command of the nation') by adding 'constituent' and 'legislative' powers to the mix – in other words, the junta now held *plenitudo potestatis*.[32] It is evident enough that the key lesson that Guzmán and the commission of experts took from Schmitt was the notion of the *sovereignty of constituent power*, which was now possessed by the junta itself.

The constitution of 1980 defines Chile's political regime as a 'democratic republic' whose 'sovereignty rests essentially with the Nation and is exercised by the people through plebiscites and periodic elections that the Constitution and laws determine, and also by the authorities that this Constitution establishes'.[33] The sovereignty of the nation proclaimed here is therefore quite distinct from popular sovereignty – indeed, it should be understood as a rampart against it. The constitution formally respected the principle of the separation of powers, with executive power in the hands of the president, legislative power entrusted to the National Congress (consisting of the Chamber of Deputies and the Senate) and judicial power lying with the Supreme Court. But it was in fact very much centred around the president, who was granted an eight-year term as well as extensive powers, including the ability to declare a state of war or siege without having to seek the approval of Congress. From a historical perspective, the constitution of 1980 is based on the authoritarian, presidential model of the constitution of 1833. According to the junta ideologues, the Chile of 1973 was in need of a 'conservative revolution' of the kind once led by Diego Portales.[34] In order to fulfil this function, the 1980 constitution assigned to the armed forces the role of guaranteeing the 'institutional order of the

Republic' and created a National Security Council whose members were mainly senior army officers. It also set up a Constitutional Court whose primary function was to adjudicate on the constitutionality of proposed laws; it also had the power to declare organizations and political parties unconstitutional. Three of its seven members were to be drawn from the Supreme Court and two from the army-dominated National Security Council. In addition to the twenty-six senators elected by universal suffrage, the Senate was to consist of nine senators designated by various state bodies, including the four commanders-in-chief of the armed forces. According to Jaime Guzmán, the raison d'être of these appointed senators was to limit the impact of universal suffrage on the Chilean political regime, for in his view it did not fully express the deepest and most permanent will of the nation. Finally, the central bank's independence from the government is enshrined in the constitution – a status that clearly reflects a direct neoliberal influence. The ultimate objective of all this was to ensure that the new order could not be changed or reversed, whoever came to power.

This very point is eloquently made by Jaime Guzmán in a 1979 article entitled 'El camino político' (The Political Path):

> To achieve stability, it is necessary to ensure that the alternatives vying for power are not appreciably different, . . . and that the benefits of private property and private enterprise have taken root so widely and firmly in society that any actual attempt to attack them would inevitably hit a brick wall . . . The important thing is not who's governing, but rather what the scope of their power is when they take over the reins of the state . . . If our adversaries were to arrive in government, they would be forced to follow a course of action not very different from the one we would have preferred, because – if a metaphor be allowed – the playing field already constrains the possible actions by the players and makes it very difficult for them to act otherwise.[35]

The metaphor of the rules of the game being imposed by the playing field (the institutional arsenal) could not be clearer.

At the heart of this edifice is the fundamental principle of subsidiarity, which derived from a social doctrine elaborated by the Catholic Church in the nineteenth century and later fed into twentieth-century corporatism. The emphasis was on a hierarchy of natural communities into which individuals could integrate themselves, the aim being to restore to their former status a whole range of intermediate entities – family, corporations, the regions, the church, the armed forces and ultimately the nation – that were deemed to be the natural repositories of power in a society. Modern politics was seen as

having a corrosive effect on these natural associations. Taking as their starting point the aspirations of the individual, the junta's ideologues repurposed this principle of subsidiarity as an argument against suffocating state intervention and in favour of individual freedom, the cornerstones of which were economic freedom, private property and the market.[36] This protected individual sphere is considered to be the unplanned product of cultural traditions filtered through natural selection, and no collective agent can reasonably be expected to transform it – a perspective manifestly influenced by Hayek. At an ideological level, the advantage of the subsidiarity principle is that equating the social order with a natural order justifies the championing of the market, where individuals are in competition with each other. Elevated to the status of a constitutional principle, however, the result is that the state and its various institutions can only intervene in the markets when private enterprise proves insufficient (and on condition of prior approval by Congress). The state may only act in the private market sphere if private actors fail to do so to the necessary extent. This same logic would lead to the privatizing of basic services and the entrusting of fundamental rights (healthcare, education, housing, pensions, and so on) to private individuals, relieving the state of its responsibility for guaranteeing individual rights. But this subsidiarity-type state is not a 'minimal state' for all that.[37] Notwithstanding Hayek's claims about the spontaneous nature of the market order, the social transformation envisaged by the junta presupposed a 'huge constructivist effort'.[38] This involved creating the conditions for markets to function without being excessively constrained by legislation relating to social protection. These markets were to include the labour, education, healthcare and health insurance markets among others, and insofar as the new constitution gave legal primacy to the markets and private law, it fully deserves its description by the Chilean constitutional expert Fernando Atria as a *constitución tramposa*, or 'booby-trapped constitution'.[39]

In the previously cited essay of 1979, Jaime Guzmán states in his own fashion how essential it is that state intervention be constrained within the principle of subsidiarity enshrined in the constitution: 'It is important that Chileans are able to experience these personal freedoms tangibly for a sufficient period of time, for then every citizen will duly become the most ardent defender of such freedoms.' He adds: 'Only such a period, in which people are able to exercise socio-economic freedom and directly feel the

benefits of it, will serve as an effective bulwark against a fresh outbreak of socialism.'[40] The point is clear enough: ensuring the long-term survival of an economic policy is not an end in itself, but a means of radically transforming human beings themselves.

The transition and the *enclaves autoritarios*

In 1989, in line with the provisions of the constitution, the Pinochet regime set up an independent central bank whose key prerogatives pertained to public expenditure, monetary policy, currency exchange and loans. The law creating this bank was passed following the 'no' vote in the 1988 referendum and was part of a carefully calculated strategy. Between the referendum defeat and the general election of 1989, even as it was negotiating the constitutional framework for the transition with civilian representatives, the military regime was busy introducing a series of institutional safeguards known as *enclaves autoritarios* (power-wielding enclaves). The idea was to impose a conservative approach on the newly elected government by reinforcing certain state institutions, which would act to preserve the status quo. The stated objective was to ensure that economic stability was unaffected by the actions of elected governments locked into a 'short-termist' mindset. The statutes of the central bank were designed to shield it from the influence of the Ministry of the Economy. It was to be run by a board of five members, each of whom would serve for a period of two to ten years and could only be replaced under a strictly defined set of circumstances. On top of that, Senate approval would henceforward be required for the appointment of new members. But, as Marcus Taylor notes, this arrangement did not entail a diminution of state power but rather a transfer of power between state institutions. The aim here was to 'depoliticize' macro-economic management by placing it outside the scope of democratic political action and entrusting it instead to technocrats who would perpetuate the mechanisms and goals established during the Pinochet era.[41] Other reforms were to follow that were also designed to maintain the status quo, such as nine of the senators being designated (rather than elected), Pinochet continuing to serve as army commander-in-chief and being made a senator for life and an electoral system that favoured the predominance of right-wing parties. By these

means, the junta was hoping to ensure that future governments could not interfere with the institutional bedrock of the neoliberal transformation of society.

Against a backdrop of growing social protest between 1983 and 1986, the Alianza Democrática (Democratic Alliance) was formed with the intention of negotiating a political settlement with the military upon two conditions: first, that the communists were excluded from the alliance, as their presence would not have been tolerated by the armed forces; and second, the alliance had to accept the slightly amended 1980 constitution as a given – a concession that was to have significant consequences.[42] This constitution was put to a referendum in 1989, which endowed it with a democratic legitimacy that it had been lacking (the referendum of 11 September 1980 carried no democratic weight). However, although some of the amendments approved in the referendum went in a democratic direction, others, such as the requirement for larger quorums to approve standard legislation, meant that the government could pass laws with a majority in just one house and barely a third of votes in the other. Lastly, in 2005 a number of fundamental amendments were introduced, some of which were democratic in intent (such as putting an end to the designation of senators). But power-wielding institutions were also preserved, such as the independent central bank with the power to dictate economic policy, and new constraints on democracy emerged, including the prerogatives accorded to the Constitutional Court.[43]

The status accorded to this court is worth dwelling upon, since its powers place it de facto above the two houses of Congress. Even if the Chamber of Deputies and the Senate pass a bill, there is no guarantee that it will become law. A group of deputies or senators can petition the Constitutional Court to rule on the constitutionality of the bill; should it be found unconstitutional, the court can prevent it from entering into law. Such a prerogative turns the court into a sort of unofficial third legislative chamber that ranks above the other two in terms of its power. Even if deputies and senators (elected by the people) vote for a law they believe to be in the national interest, a group of appointed judges (not elected by the people) can block its adoption. The court's ability to counter the will of democratically elected representatives contravenes the principle of the separation of powers enshrined in the constitution. As we will see in Chapter 4, Hayek's fingerprints are all over an arrangement whereby a court made up of judges and former members of the legislature and government are exclusively responsible for ensuring

strict compliance with the constitution, in the teeth of electoral majorities if need be. True to this influence, the amended constitution of 2005 (Article 93) elevates the court above the two houses of Congress and exempts it from any democratic oversight. To echo Schmitt, it is transformed into a sort of 'guardian of the constitution' *within* the constitution whose role is to ensure absolute compliance with the laws establishing the primacy of the market.[44]

To appreciate how this constitution has blocked any recalibrating of the relationship between state and market, it is revealing to consider the case of water-resource privatization, provided for by both the 1980 constitution and the 1981 Water Code.[45] Article 19 (24) of the constitution stipulates: 'The rights of individuals over the waters, recognized or constituted in accordance with the law, will grant their holders ownership over them.'[46] In other words, only the issue of private ownership is addressed – the right of citizens to access water is *not* protected, meaning that companies can secure the rights to use water resources as they see fit, even if this is harmful to local communities, their fields and their animals. The constitution does not set out any rules for distributing or using water, nor does it seek to ensure that whole swathes of the population are not deprived of access to it. Ultimately, those who have money to buy the rights will have access to water, and those who do not will possess no rights. The state concedes these rights for an unlimited period with no restrictions on how they are used, and the rights can be traded – in effect, creating a market for water. This legal framework favours agricultural and mining concerns with huge water requirements, concentrating water rights to the detriment of individuals living in precarious circumstances and deepening inequality in terms of access to water. It is no coincidence that water issues were central to the Chile despertó movement.[47]

Extrapolating from the specific case of Chile

In seeking to draw general lessons from the neoliberal experiment in Chile, we should beware of making easy extrapolations. While certain features do lend themselves to generalization, others are specific to the Chilean situation and less widely applicable.

There are three traits, however, that reveal the underlying tenets of neoliberalism. First:

> Neoliberal social engineering . . . restructures state-society relations not in order to weaken the state but rather to strengthen those state institutions that create and reinforce the disciplinary power of the markets . . . The neoliberal state is therefore by no means a weak state [but] an activist and efficient state.[48]

Second, the objective is not merely to implement an economic policy but also to achieve a profound transformation of all social relations through the ruthless discipline of the market. In its Declaration of Principles published in 1974, the regime proclaimed its desire to give Chile a 'new institutional basis . . . to rebuild the country morally, institutionally and materially'.[49] Third, depoliticizing the economy and enshrining private law provisions in the constitution go hand in hand. And it is this connection that should prompt us to reassess Hayek's contribution to the Chilean experiment rather than elevating Friedman to the status of prime mover. The goal was to usher in a so-called 'protected democracy' and ensure its 'insulation from politics' in José Piñera's phrase, a direct echo of Hayek's 'dethrone politics' battle cry.[50]

That said, we should be wary of the 'laboratory' metaphor, which has been somewhat abused in the Chilean context. The notion of a purveyor of shock remedies (Milton Friedman) who was in search of a '*laissez-faire* laboratory' to test his scientific theories wherever and whenever the right opportunity presented itself (Chile, Brazil, Uruguay and then Argentina, in an ever-expanding counterrevolutionary circle) does not, in fact, stand up to closer examination.[51] A society is not some kind of huge laboratory, and new conditions cannot be artificially created simply by adjusting a few parameters. It is true that government policy was impregnated with a certain experimental logic that was the corollary of the depoliticizing of the economy and involved 'reducing the citizen to a *homo œconomicus* exclusively guided by a functional rationality, society to one big experimental laboratory, and politics to honing and conducting experimental trials'.[52] But this experimental attitude on the part of governments is simply not comparable to the rigour of experimental science.

One needs to be similarly circumspect regarding the seductive notion of a 'model'. Chile was not a model copied by various Latin American

countries, notwithstanding neoliberal propaganda celebrating the ‘jaguar’ of the subregion and the ‘Chilean miracle’. On the contrary, Chile was a unique case and should be analysed as such. The path that neoliberalism took there was related to specific national conditions, as reflected in the different outcomes in Chile and Argentina. In both cases, government policies were inspired by the theories of the Chicago School, and one can discern certain common traits that ‘contradict the notion that the military had a clear and premeditated economic plan before seizing power’. ‘In neither Chile nor Argentina is the Chicago doctrine perceptible in the governments’ initial economic choices, which are scarcely different from traditional adjustment programmes implemented in the past’, the main distinctive feature being the very sharp drop in salaries in both countries.[53] There are, however, ‘differences in the timing and scale of the application of neoliberal measures’: compared to Chile, Argentina’s ‘transformations are more limited, contradictory and informal insofar as they are not all contained within a new institutional framework’.[54] In Chile, the greater centralization around the leader dissipated tensions within the governmental team, whereas rifts and dissensions persisted for some time in Argentina both within the military and among civilians.[55] We must therefore be wary of treating neoliberalism as an economic model ‘devoid of any specific national characteristics’, as if it could simply be bolted on without being adapted to the conditions prevailing in each country.[56]

The same applies when considering the developed countries that subsequently adapted the neoliberal model to their own situations. In retrospect, the Chilean experiment can admittedly appear to have anticipated economic globalization, but it was played out in the very specific political context of a dictatorship that arose from a coup and was tightly centred around the president. Unlike in France, Britain and Germany, neoliberal policies in Chile did not immediately assume the classic form of governmentality analysed by Foucault, where conduct is indirectly guided by playing on people’s basic motivations. In fact, the authoritarianism of Margaret Thatcher and Tony Blair was accompanied by increased governmentalization.[57] In Chile, the putting into place of converging elements of governmentality preceded the governmentalizing of the state, which only really kicked in with the departure of Pinochet and the start of the transition. The case of the universities is instructive in this respect. The privatization of higher education was something that Pinochet

desired and duly implemented. As of today, only fourteen Chilean universities are public, barely 17 per cent of the country's total. Both in terms of the thinking behind it and its consequences, this privatization cannot be reduced to a purely economic policy. It established a legal and institutional framework that extensively promoted open competition, which would in turn profoundly and enduringly transform the conduct of individuals. In the case of Chile, the predominant logic was to *discipline* individuals through the market. We are justified in objecting when we see neoliberalism being neatly extracted from its historical context and elevated into a 'premeditated and conspiratorial project'.[58] The Chilean experience should encourage us, on the contrary, to insert it back into history, and into the history of Chile in particular.

It is only against this backdrop that we can appreciate the full significance of the popular victory on 25 October 2020. The demand for constitutional reform of the Chilean despertó movement was born out of an acute awareness that Pinochet's constitution was blocking any possibility of a genuine political alternative. The parties meanwhile did their best to channel the movement to their advantage. On 15 November 2019, they quietly reached a national peace agreement among themselves that proposed consulting the people in two stages: through a referendum on a new constitution; and then through a second plebiscite on the make-up of the convention that would be tasked with drafting the new constitution (the choice being between a 'mixed convention', with 50 per cent of the places reserved for party representatives and a 'constitutional convention' entirely elected by citizens). But a new agreement was reached in December of that year to merge the two votes and ask Chileans to vote simultaneously on whether they wanted a new constitution, and if so what kind of convention they wanted. The clear hope of the parties was that this would prompt people to vote for a mixed convention when voting in favour of a new constitution. But – despite these manoeuvres, the lengthy quarantines ordered by Sebastián Piñera (which penalized the poorest most, as they did not benefit from any social protection) and the postponement of the referendum (initially scheduled for 27 April 2020) – the vote on 25 October 2020 constituted a stinging rebuke for the political parties and their representatives. And what set this constitutional convention apart from other types of convention (such as a mixed convention or a standard legislative assembly exercising its power to amend the constitution) was not

merely its make-up but the specific power conferred on it: it was expressly created to draft a new constitution, *not* to adopt that constitution in place of the country's citizens. This point is crucial – only a convention of this kind could reverse the junta's appropriation of the constituent power of the people in the coup of 1973. Behind the constitution of 1980 lay a deeper challenge to the coup of 1973.

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1 Roberto Bolaño, *By Night in Chile*, trans. Chris Andrews, New Directions, 2003, p. 82. This novel takes the form of the deathbed confession of a priest, who looks back critically at his life over the course of a single night. The attempted coup of 29 June 1973 is known as El Tancazo on account of the role played by tanks. On 30 June 1973, the Argentinian cameraman Leonardo Henrichsen filmed the helmeted soldier who was to shoot him dead moments later. Some 700,000 to 800,000 people took part in the demonstration in support of Salvador Allende on 4 September 1973.

2 Franck Gaudichaud, *Chili 1970–1973. Mille jours qui ébranlèrent le monde*, Presses Universitaires de Rennes, 2020, p. 288.

3 Keith Dixon, *Les évangélistes du marché. Les intellectuels britanniques et le néolibéralisme*, Les Éditions Raisons d'Agir, 1998, p. 26.

4 Brendan Montague, 'The Day Thatcher Met Hayek – and How This Led to Privatisation', *Ecologist*, 10 August 2018 (theecologist.org).

5 This award is not a true Nobel Prize, however, as it was not created by Alfred Nobel but by Sweden's central bank in 1969, its official name being the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel. Gilles Dostaler, *Le libéralisme de Hayek*, La Découverte (Repères), 2001, pp. 23–4.

6 This is a fictional conversation imagined by Jean-Philippe Bidault in the very liberal review *Contrepoints* on 10 December 2014 (available in French only: contrepoints.org).

7 The word 'serfdom' being an echo of Hayek's major 1944 work, *The Road to Serfdom*. As early as 1975, Hayek was rejecting the idea of a single European currency, which, in his view, was doomed to failure on account of the monopoly that would be enjoyed by the European Central Bank (ECB). Instead, he argued for an end to monopolies on currency, the issuing of which should in his view be subject to the rules of competition.

8 John Ranelagh, *Thatcher's People – An Insider's Account of the Politics, the Power and the Personalities*, HarperCollins, 1991, p. ix.

9 See the Margaret Thatcher Foundation archive (margaretthatcher.org).

10 Ibid.

11 Margaret Thatcher Foundation archive (margaretthatcher.org).

12 Hayek, interviewed by Renée Sallas, *El Mercurio*, 12 April 1981 (puntodevistaeconomico.com).

13 Régis Debray's pamphlet *Revolution in the Revolution? – Armed Struggle and Political Struggle in Latin America* (trans. Bobbye Ortiz, Verso, 2017), which made quite an impact when it was first published in 1967, sets out a fully fledged version of *foco* theory.

14 Maurice Najman, *Le Monde diplomatique*, October 1973. We will return to these organs of popular power later. The expression 'dual power' is used to describe the situation in Russia between February and October 1917, when there were two competing power bases: on the one hand, the Provisional Government led by Alexander Kerensky; and on the other the soviets, consisting of worker, soldier and peasant deputies. Adherents of Trotskyism, like Najman, tend to interpret any pre-revolutionary situation through the lens of dual power.

15 Gaudichaud, *Chili 1970–1973*, p. 288.

16 Ibid., pp. 295–300.

17 First appearing on the outskirts of cities, the *cordones industriales* were organs of popular power: grassroots bodies consisting of union members from several companies in the same urban neighbourhood.

18 Ibid., p. 299.

19 Ibid., p. 278–80.

20 Ibid., p. 276.

21 Ibid., p. 285.

22 Ibid., p. 300.

23 Ibid., p. 303. The two phrases in quotation marks refer to the book by Luis Corvalán Marquez, *La secreta obscenidad de la historia de Chile contemporáneo: Lo que dicen los documentos norteamericanos y otras fuentes documentales. 1962–1976*, Palabra Editorial, 2012.

24 Jacques Le Bourgeois, 'La propagande du régime militaire chilien de 1973 à 1989', *Cahiers de psychologie politique*, no. 18, January 2011, cpp.numerev.com.

25 These intellectuals included the historian Gonzalo Vial Correa, who after the coup was involved in authoring *El Libro Blanco*, published on 30 October 1973.

26 Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*, Metropolitan Books/Henry Holt, 2007, p. 79. The document known as *El ladrillo* (The brick), drafted during the Allende administration to prepare for a new government instituted by force, reveals above all the extent to which the Chicago economists were in agreement on the eve of the coup. It should not, however, be seen as a ready-made programme endorsed by the junta that it simply had to implement once in power.

27 Marcus Taylor, *From Pinochet to the 'Third Way' – Neoliberalism and Social Transformation in Chile*, Pluto, 2006, pp. 54–5.

28 Stéphane Boisard and Mariana Heredia, 'Laboratoires de la mondialisation économique: Regards croisés sur les dictatures argentine et chilienne des années 1970', *Vingtième Siècle*, no. 105, January–March 2010, p. 117.

29 Taylor, *From Pinochet to the 'Third Way'*, p. 56.

30 Ibid., pp. 60–1.

31 See, for example, Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer, Duke University Press, 2008.

32 See Cristian A. Zamorano-Guzmán, 'Centralisme *portalien*, concepts *schmittiens* et carences de légitimité de la Constitution chilienne de 1980', *Les Cahiers ALHIM*, no. 16, 2008. The author himself refers to Renato Cristi, *El pensamiento politico de Jaime Guzmán. Autoridad y libertad*, LOM, 2000.

33 For further commentary, see Carlos Ruiz Schneider, 'La democracia en la transición chilena y los limites de las politicas de derechos humanos', in Roberto Aceituno et al., *Golpe 1973–2013*, vol. 1, El Buen Aire, 2013, pp. 101–2.

34 During the drafting of the 1980 constitution, Pinochet frequently referred to Diego Portales, the leading conservative politician who was instrumental in delivering the 1833 constitution and who is seen by some as the architect of the country's political stability (see Zamorano-Guzmán, 'Centralisme *portalien*').

35 Jaime Guzmán, 'El camino político', *Realidad*, Año 1, no. 7, 1979, available on the Guzmán archive website: harchivojaimeguzman.cl.

36 Carlos Ruiz Schneider, 'Notas sobre algunas condicionantes de la politica actual', in Aceituno et al., *Golpe 2013–1973*, p. 83. To put this in context, it is worth pointing out that the neoliberal repurposing of the Catholic principle of subsidiarity is not new – it was already to be found at the core of Wilhelm Röpke's ordoliberalism in the mid-1940s (see, in particular, *Civitas humana*). However, the Chilean version of it is characterized by a much more pronounced emphasis on the natural order.

37 In the sense employed by Robert Nozick in *Anarchy, State and Utopia* (1974): namely, an agency that has won a monopoly in the security market in the face of other competing agencies offering protection. Indeed, Hayek himself criticizes Nozick's 'minimal state' (see Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, p. 41).

38 This aspect is rightly highlighted by Ruiz Schneider, 'Notas sobre algunas condicionantes', p. 84.

39 Ibid.

40 Jaime Guzmán, 'El camino politico'.

41 Taylor, *From Pinochet to the 'Third Way'*, p. 105.

42 Ruiz Schneider, 'La democracia en la transición chilena', p. 105.

43 Ibid., p. 106.

44 When Schmitt first engaged with this issue in 1931, however, his 'guardian of the constitution' was not a constitutional court but the president himself. Ruiz Schneider quite correctly includes the Constitutional Court among the 'counter-majority institutions', which is to say entities that are designed to pre-empt and counter any electoral majority (Ruiz Schneider, 'La democracia en la transición chilena', p. 113).

45 See the article by the geographers Cécile Faliès, Audrey Sérandour, Chloé Nicolas-Artero and Solène Rey-Coquais: 'Au Chili, changer la Constitution pour repenser l'accès aux ressources?', *The Conversation*, 3 December 2019.

46 Translation (amended) by Rodrigo Delaveau Swett, deputy justice of the Constitutional Court of Chile, available at constituteproject.org.

47 A piece of graffiti that appeared in November 2019 – 'Liberen el agua' (Free up the water) – succinctly expressed the importance of this issue in the eyes of the protesters.

48 Taylor, *From Pinochet to the 'Third Way'*, pp. 43–4.

49 Ibid., p. 31.

50 Klein, *The Shock Doctrine*, p. 204.

51 Naomi Klein succumbs to this temptation, describing how 'in Latin America's Southern Cone . . . the Chicago School counterrevolution quickly spread'. Ibid., p. 87.

52 Boisard and Heredia, 'Laboratoires de la mondialisation économique', p. 123.

53 Ibid., p. 118.

54 Ibid., p. 120.

55 Ibid., p. 124. After a few years in power, General Pinochet could boast that 'not so much as a leaf could fall in Chile without him knowing about it'.

56 Ibid., p. 110.

57 See Tariq Ali, *Rough Music – Blair, Bombs, Baghdad, London, Terror*, Verso, 2006. The (unwritten) British constitution confers on the prime minister what are essentially limitless powers to appoint personnel, and Blair took advantage of this to develop a presidential style of government that was even more authoritarian than Thatcher's.

58 Boisard and Heredia, 'Laboratoires de la mondialisation économique', p. 110.

2

Neoliberal Demophobia

A regional conference of the Mont Pelerin Society was held in Viña del Mar, just up the coast from Valparaíso, from 15 to 19 November 1981. The representatives of the main currents of neoliberalism around the world were present to denounce in unison the ‘democratic danger’ and welcome the new Chilean regime established by Pinochet. It was a striking illustration of the extent to which the disciples of Hayek and of Friedman, the ordoliberals, and the champions of public choice were agreed on the potential menace posed by democracy to freedom and civilization.[1] The participants unanimously expressed their conviction that the most fundamental reforms could only be implemented under authoritarian regimes. The German ordoliberal Wolfgang Frickhöffer insisted on the fact that the famous Ludwig Erhard reforms in Germany in 1948 were only possible under the non-democratic governance of the occupying powers, claiming that they simply could not have happened if they had been subject to standard Bundestag approval procedures. A comparison with the 1973 *golpe* led him to conclude that the military’s seizure of power was justified and inevitable.[2]

At this same colloquium, Carlos Francisco Cáceres, another Mont Pelerin Society member who would soon become president of the Central Bank of Chile and then the minister of finance, explained that, after 1973, there had never been any question of returning to full democracy, as this would have led to what he called demagogy and moral degeneracy. Instead, the aim was to establish a regime based on rights consistent with human nature, where

the primary function of the state was to safeguard the common good.[3] Cáceres, who had shortly before helped draft the Hayek-inspired 1980 constitution, knew what he was talking about. For all the members of the Mont Pelerin Society, Chile was a shining example and a sort of historical paradigm: having been a victim for decades of a parliamentary system that very nearly led to collectivism, the country had been happily saved from such a fate by a muscular intervention that ushered in the political and constitutional prerequisites for freedom. Their attitude to Pinochet's coup is a telling reflection of their mistrust – hatred even – of democracy when it is accompanied by demands for equality and social justice. In fact, this was not the first time that the leading lights of neoliberalism had welcomed a coup d'état. Röpke had made no secret of his delight at the coup of 1964 when the CIA helped topple the Brazilian president Joâo Goulart and ushered in a military dictatorship; like Hayek, he had always been well-disposed towards supposedly liberal dictatorships like that of António de Oliveira Salazar in Portugal. It is a political myth that neoliberalism is a doctrine that stands in opposition to state interventionism and the curtailing of personal freedoms and instead champions democracy and the free market. This heroic interpretation, and the attendant notion that neoliberalism has played a key role in warding off totalitarianism, is a distortion of history. It overlooks the fact that the doctrine has been imbued from the very outset with an *anti-democratic* spirit and constitutes a radical rejection of the ideal of the sovereignty of the people in the modern age, even if, for obvious tactical reasons, this aspect tends to be played down. This critical attitude towards democracy is not incidental to the various theoretical currents of neoliberalism – on the contrary, it is a central issue in that democracy is viewed by neoliberals as the source of the worst imaginable danger, namely *collectivism*. This was already the conclusion they were drawing from the crisis of the Weimar Republic in the 1930s, and they were similarly preoccupied by the spread of the welfare state after 1945. Without troubling themselves too much about nuances, the critical rhetoric of the likes of Hayek and Röpke seems invariably to establish a direct link between social protection and full employment, on the one hand, and Nazism and the gulag on the other. In this respect, although we may now live in a different age, there is a marked continuity between the pre-war outlook and that of the extended post-war period. As a theoretical enterprise, neoliberalism has concerned itself with constantly challenging

the legitimacy of mass democracy, which is seen as an obstacle to be overcome. As a political exercise, it has involved testing a broad range of means to neutralize it. By scrutinizing more closely this neoliberal *demophobia*, at the level of both theory and governance, we will be better able to appreciate the violence inherent to it, which is considered perfectly legitimate if it is used to defend the competition-based order. The neoliberal doctrine can be seen as a theory of the *institutional constraints* to be placed on the urge for popular sovereignty, insofar as this urge, if not properly contained, brings with it the threat of the 'total state', which is to say a state that intervenes in every walk of life to cater to the interest groups on which it depends.[4] Precisely because this danger is seen as part and parcel of modern democracy, the neoliberal ideology implies a warfare mentality when it comes to democracy in action (that is, when election results and popular protests jeopardize the functioning of the market).

The two forms of democracy

In all its versions, neoliberal thought has been constant in its criticism of democracy founded on the 'myth' of the sovereignty of the people. The pioneers of the political repurposing of liberalism – Louis Rougier, Walter Lippmann, Ludwig von Mises, Friedrich Hayek and Wilhelm Röpke – assert in their writings that the *democratic mystique*, the tyranny of public opinion and the stupidity of the masses constitute the true danger for liberalism and that it is therefore important to create institutional bulwarks against the pernicious effects of the dogma of popular sovereignty. Admittedly, they tolerate a limited form of democracy, which is seen as something positive provided it remains elitist and resolutely protects individual freedom of choice and private property. This is what they mean by *liberal democracy*. But the moment democracy becomes an exercise in reflecting the popular will, neoliberals see it as a fatal poison for so-called free societies and demand draconian measures to purportedly re-establish freedom. This should emphatically not be seen as a late-stage radicalization of neoliberalism. The question of democracy has been bound up with one of the central preoccupations of conservative thought since the end of the nineteenth century: the growing power of the masses. These masses, so the argument goes, do not have the intellectual wherewithal to resist the

demagogues who promise them greater prosperity if they accept a dirigiste state when it comes to the economy. And so, unless democracy is seriously curtailed, it will be the harbinger of a collectivism that will put paid to all individual freedoms and rights.

In an intervention at the Lippmann Colloquium in 1938, Louis Rougier succinctly summed up this distinction between 'liberal democracy' and a form of democracy founded on popular sovereignty, which he termed 'socialistic' and which, in his view, led inevitably to the totalitarian state:

> The word democracy contains a terrible ambivalence. There are two conceptions of democracy. The first is the idea of liberal democracy, based on the limitation of the powers of the State, the respect for the rights of the individual and of the citizen, the subordination of legislative and executive power to a superior legal authority. The second is the idea of socialistic democracy based on the notion of popular sovereignty. The first proceeds from theorists of the law of nations [jus gentium], Protestant publicists, American and French declarations [of human rights] and affirms the principle of the sovereignty of the individual; the second proceeds from Rousseau and affirms the principle of the sovereignty of the mass. The second is the negation of the first. It leads inevitably to demagoguery, and through demagoguery, to the totalitarian State. Once the masses, thanks to compulsory education, have come to realize that, through the mechanism of universal suffrage, based on the law of numbers, they can (being more numerous) take hold of the power of the State, they give themselves to the party that leads them to the assault on public authorities and they substitute, for the problem of the production of wealth, the demand for its immediate distribution among the most deprived classes. The State sinks into impoverishment and anarchy and one can only pull it out of this, in appearance, by resorting to a dictatorial government. The best purveyors of totalitarian States are socialist demagogues.[5]

It would be difficult to find a more explicit and categorical rejection of the people, universal suffrage, majority rule, political pluralism, distributive justice, public education and the most disadvantaged sections of society. Neoliberalism's adherence to democracy is thus only ever partial in that it makes a consistent distinction between liberal democracy (demophobic by definition) and unlimited or totalitarian democracy – a theoretical stance that touts the former as a means of neutralizing the latter.

Hayek, for example, acknowledged the value of liberal democracy, but within certain limits:

> The true value of democracy is to serve as a sanitary precaution protecting us against an abuse of power. It enables us to get rid of a government and try to replace it by a better one . . . But it is far from being the highest political value, and an unlimited democracy may well be worse than limited governments of a different kind.[6]

In the neoliberal conception, democracy is simply a procedure for selecting leaders (perhaps even the best procedure), but without all the pernicious dogma of popular and parliamentary sovereignty that tends to go with it. In practice, the argument goes, this oft-touted popular sovereignty can only be exercised by an elected parliamentary majority; but in order to remain elected, this majority must 'serve particular ends' at the expense of 'abstract rules of conduct'.[7] In other words, parliamentary sovereignty necessarily infringes upon the sovereignty of the law. The kind of strictly procedural democracy that appeals to Hayek, by contrast, should be judged solely on its concrete results, rather than on any values that might underpin it. It should serve to prevent arbitrary abuses and to protect individual liberties, which in turn should take precedence over political freedom (the participation of the people in choosing their leaders). In Hayek's view, when a people is described as free, this 'derives from an application of our concept [freedom] to groups of men as a whole which gives them a sort of collective liberty'. But this is a serious source of historical confusion, since 'a free people in this sense is not necessarily a people of free men'.[8] Individuals can be oppressed in a democratic system, just as they can be free under a dictatorship. On this point, Hayek is sharply at odds with Raymond Aron, for whom all types of freedom are worth defending and who sees the distinction between democracy and totalitarianism as fundamental.[9] What is fundamental for Hayek in his 'catallactics' is individual freedom of choice, meaning that it is perfectly permissible to curtail (or suppress altogether) political and intellectual freedom in order to defend the spontaneous order of the market.[10] He therefore considers the conception of democracy and totalitarianism as binary opposites to be a profound error. Rather, it is liberalism that acts as a bulwark against totalitarianism since democracy pertains solely to the way in which leaders are chosen and not to how they wield their power:

> Liberalism is concerned with the functions of government and particularly with the limitation of all its powers. Democracy is concerned with the question of who is to direct government. Liberalism requires that all power, and therefore also that of the majority, be limited.[11]

The danger of unchecked parliamentary power and birth of the welfare state

Certain historians have clearly been influenced by this distinction when they claim that the roots of totalitarian democracy are to be found in the eighteenth century and, more specifically, in the philosophy of the French Revolution. In *The Origins of Totalitarian Democracy*, Jacob Leib Talmon argues that the West has developed and pursued two distinct democratic paths: the *liberal* path, where individual freedom (the absence of coercion) is the supreme value, and the *totalitarian* path inspired by Rousseau and the Jacobins, where the sovereignty of the people reigns supreme. In the latter case, an absolute power is accorded to establish a supposedly natural and harmonious order, which in Talmon's view ultimately leads straight to Stalinism. The whole history of Western societies, from Rousseau and the French Revolution to fascism and communism, is conceived of as a confrontation between these two democratic paths.[12] Like Rougier and Lippmann, Hayek was convinced that 'Jacobin democracy' leads to socialism because it is based on the dual commitment to popular sovereignty and social justice – two myths that have progressively removed the constraints on state power and seriously imperilled the spontaneous social order. For Hayek, this unfortunate democratic creep is a consequence of the unlimited prerogatives of representative assemblies that claim to embody the popular will and to be working towards social justice. The combination of these two elements is at the root of a constructivist approach that confuses the process for selecting representatives with the legitimate scope of their power – legal positivists would point out that a similar error occurs when people confuse what is endorsed by the majority with what is right. A majority does not suffice for this, any more than it necessarily produces a *common good*. In fact, the converse is often true – in order to get re-elected, a governing majority will cross its erstwhile red lines, particularly when it comes to respecting individual liberties. Political history would appear to bear this out: post-war liberal majorities implemented left-wing, redistributive, Keynesian policies in order to hang on to power at all costs. In fact, the tyranny of the majority often boils down to a coalition of interests in the political marketplace and involves the allocating of privileges to certain powerful or threatening groups at the expense of other groups.

For Hayek, however, a market-centred society is only viable if politics itself is *not* a market. Talk of popular sovereignty is in truth a smokescreen for horse-trading between vested interests, serving to 'deprive the term

“democracy” of clear meaning and turn it into a word-fetish used to clothe with an aura of legitimacy any demands of a group that wishes to shape some feature of society to its special wishes’.[13] He considers the word ‘democracy’ to obscure a sort of continual breach of the law (by which he essentially means private law) resulting from vested interests seeking to impose their collective will at the expense of the actual interests of individuals: ‘It would seem that wherever democratic institutions ceased to be restrained by the tradition of the Rule of Law, they led not only to “totalitarian democracy” but in due time even to a “plebiscitary dictatorship”.’[14] This dictatorship of pressure groups, and trade unions in particular, who are criticized for seriously undermining entrepreneurial spirit and the market order, is expressed through decrees. These may look like and indeed go by the name of *laws*, but they are in fact rules of conduct aimed at particular outcomes (whereas a law is by definition an abstract general rule that is separate from the various practical and unforeseeable ends to which it might be put).[15] The generalized ‘corruption’ and bargaining results in a ‘series of deals by which the wishes of one group are satisfied in return for the satisfaction of the wishes of another (and frequently at the expense of a third who is not consulted)’.[16]

This tendency towards extensive bargaining and government intervention in relation to vested interests is encouraged by the ‘mirage of social justice’: ‘So long as the belief in “social justice” governs political action, this process must progressively approach nearer and nearer to a totalitarian system.’[17] The myth of social justice is a faith in the idea that everyone should receive their due according to their merit, the market order being incapable of guaranteeing that the most deserving will receive more than the least deserving. If the idea of redistributive justice remains unchallenged, people will continue to demand that society or the powers that be ensure a fair distribution of benefits. Hayek is adamant that moral considerations should not enter into the outcomes of competition – the market has nothing to do with morality but rather is about the supreme value of individual freedom, which no collective principle should be allowed to challenge: ‘No principles of collective conduct which bind the individual can exist in a society of free men. What we have achieved we owe to securing to the individuals the chance of creating for themselves a

protected domain (their "property") within which they can use their abilities for their own purposes.'[18]

All the bargaining and the 'superstitions' associated with sovereignty and justice give rise to interventionist economic and social policies, the welfare state, a state monopoly over certain services (such as the postal service or transport), full employment policies and the thriving of 'exploitative' unions. Unable to resist this constant 'blackmail' by vested interests, the government becomes a 'slave' to them and ends up 'lurching like a steam roller driven by one who is drunk', becoming in turn repressive itself.[19]

This mission creep stems from the rationalist illusion that the state is capable of abstractly defining the best social order – a presumption that Hayek would ultimately describe as a 'fatal conceit'.[20] This is what supposedly happened at the end of the nineteenth century with the social reforms that gave birth to the welfare state. As early as 1932, Walter Eucken produced a detailed conceptual critique of the interventionist direction taken by governments. In a text entitled 'Staatliche Strukturwandlungen und die Krisis des Kapitalismus' (Structural Transformations of the State and the Crisis of Capitalism), he describes how the liberal state, which left it up to entrepreneurs to shape the business sphere, was being progressively replaced by an 'interventionist economic state' (*interventionistischer Wirtschaftsstaat*) that was at the mercy of pressure groups and therefore weakened.[21] In the spiritual emptiness of a world without God, the masses were seeking salvation in a total state that believed itself to be all-powerful but was in fact impotent: the more the masses got what they wanted, the more they demanded in the name of equality and the more the state was undermined. But the problem was not confined to the excessive demands of the masses. Neoliberals have always pointed out the harm inflicted by intellectuals wedded to rationalism, who believe they can govern society and the economy down to the last detail – hence their illusions regarding central planning, socialism and all the other sins covered by the word *collectivism*. This point was, of course, made by Carl Schmitt in his well-known denunciation of the pluralism of vested interests, which he argued undermined the unity of the Reich in the interwar years. The Weimar Republic was besieged by lobbies, political parties, unions and other interest groups, all fighting for a bigger slice of the pie – a situation corresponding to Röpke's notion of Jacobin-style centralized mass democracy. On this issue, the neoliberals are explicitly in agreement with

Schmitt's critique of a pluralist state of parties that is evolving into a total state.[22]

Fear of the masses and power of the elites

This democratic creep does not emerge at a random point in Western history. It is linked to what the neoliberals – borrowing a term that is common in European and American conservative circles – call the 'age of the masses'. It is this reign of the masses – consisting of self-interested, envious, uneducated and conformist individuals who are convinced that they should run public affairs simply because they are in the majority – that is at the root of collectivism and totalitarianism. Röpke succinctly expresses this widely held view in *The Social Crisis of Our Time*: 'the collectivist state is rooted in the masses . . . and it can only exist under conditions which, sociologically speaking, we term spiritual collectivization, that is, conditions of society for which precisely the extreme democratic development is an excellent preparation but which is the direct opposite of the liberal as well as the conservative-aristocratic ideal'.[23] This is an echo of Eucken's famous observation that the most harmful aspects of modernity are the 'democratization of the world and consequent unleashing of the demonic powers of peoples'.[24] One of the European books that best reflects the intellectual and political climate in which neoliberalism arose is *The Revolt of the Masses* by José Ortega y Gasset, published in Spanish in 1930. It met with considerable success in the decade of its publication and inspired many reflections on the theme of the oppression of the elites and strong individuals by the 'mass-man' (or average man) and the conformist, dull-witted and capricious crowd. Throughout the book, Ortega y Gasset makes it clear that he misses the old liberalism, where political and cultural minorities governed: 'Now, on the other hand, the mass believes that it has the right to impose and to give force of law to notions born in the café. I doubt whether there have been other periods of history in which the multitude has come to govern more directly than in our own. That is why I speak of hyperdemocracy.'[25] And the omnipotent and universal state is the direct product of this hyperdemocratic domination.

Ortega y Gasset is merely one of many conservative authors to have expressed this fear of the masses that was so widespread in liberal circles in

the interwar years. It was a fixation of the period that resurrected the old tropes of crowd psychology associated with the likes of Gustave Le Bon. Louis Rougier, one of the spearheads of the nascent neoliberalism, also swam in these elitist waters, which gave rise to the demophobia we have already seen and is evident again in two pre-war books that addressed from different angles a single theme: *La mystique démocratique* of 1929, and *Les mystiques économiques*, published in 1938.[26] The first is an acerbic critique of democracy that covers similar themes to those found in Ortega y Gasset: the irrationality of the masses, the weight of utilitarian culture, plutocratic domination and the appeal to a disinterested elite for salvation. The goal of the second is to show how liberal democracies mutate into totalitarian regimes through ill-considered social reforms and abusive interventions by the public authorities. Encouraged by theorists advocating central planning and dirigisme, these reforms lead to the establishment of fascist or communist dictatorships.

Rougier's underlying idea is that the two basic components of modern political regimes – the inalienable natural rights of the individual, which limit the power of the state, and the sovereignty of the people, on which the legitimacy of the state rests – are incompatible and indeed a source of increasing tension. The first element is associated with John Locke and the second with Jean-Jacques Rousseau, but it is the latter who is winning out in the current age because the masses have no intention of limiting popular power – on the contrary, they are encouraging statism at the expense of individualism.

In so doing, these impatient, brutal, primitive, herd-like, materialist and nationalist masses have broken 'this wonderful calculating machine that is the price mechanism, which automatically solves the system of equations on which economic stability depends'.[27] For this philosopher, who was the only French member of the Vienna Circle, there was an insurmountable contradiction between this mechanism and the magical thinking of the masses, who seek to control and subjugate the economy as if it were something that could be moulded to their own ends, thereby satisfying their impulses towards central planning, nationalization and the redistribution of wealth:

> The masses seem to be especially unwilling to understand the laws of a balanced economy, and this is why there's never before been a greater disparity between the political, economic,

> budgetary and monetary policies of states (shaped by the pressure of the voting masses) and the repeated warnings of professors of political economy and finance.[28]

This fear of the masses – the common denominator here – is admittedly felt to varying degrees, some authors revealing themselves to be much more anti-modern than others. Röpke and Rüstow, whom some commentators have erroneously categorized as progressive, are, for example, among the most conservative thinkers, constantly denouncing the systematic destruction of moral standards, institutions and the living and working environment through the 'massification' of society. Mass organizations 'proletarianize' workers, plunging them into a situation from which only *Vitalpolitik* (policies to improve the living and working environment) can save them by encouraging the adoption of an entrepreneurial moral code that renders them 'responsible for their own actions and self-sufficient through their own work'.[29] Others, such as Lippmann (and, to a certain extent, Hayek), prefer to emphasize the regressive character of the masses and the braking effect they exert on the march of progress. These various nuances reflect the differing appreciations of the danger that the very existence of the masses represents. For some, the masses predominantly play a destructive role through their thirst for consumption, their propensity for engaging in imbecilic leisure activities and their selfishness. For others, they are, by nature, conservative, since, in preferring security over freedom, they seek to block progress and reject a society that advances through trial and error (a process of natural selection that inevitably produces a certain number of losers).

But all neoliberals are nevertheless asking the same fundamental question: how to limit the power of the people (that is, the masses)? Rougier's answer is unambiguous – power needs to be entrusted to a new 'aristocracy' and an 'art of governing' elaborated that is capable of shielding the political authorities from the masses:

> The art of governing implies a certain wisdom, technique and nobility. It requires a knowledge of the past, a concern for the future, a feel for the available possibilities, an appreciation of the resources needed to realize them, a sense of responsibility, and an attention to the requisite skills. The art of governing is thus eminently aristocratic, and can only be accomplished by the elite. Left to its own devices, the masses are quite the opposite. They are not alert to the possibilities because they are wedded to magical thinking – they believe the failure of rulers to pull off the miracles expected of them can only be explained by betrayal or a lack of genuine will. The masses are ignorant and self-satisfied: they believe themselves to be supremely competent, have little faith in the capacities of technical experts or the *intelligentzia*, and would

> happily endorse that terrible line uttered by the president of the revolutionary tribunal that condemned Lavoisier to death: 'the Republic has no need of scholars'.[30]

The notion that only an enlightened elite was capable of running economies and societies rationally was common in liberal intellectual circles, among philosophers as much as economists. In his final work, *Jenseits von Angebot und Nachfrage* (1958), Röpke argued that 'the "revolt of the masses" must be countered by another revolt, the "revolt of the elite"' – in his view, no healthy society could survive unless it was ruled by a 'true *nobilitas naturalis*'.[31] The American Walter Lippmann was less enthusiastic about the idea of a new aristocracy, but, ever since the 1920s, he had been arguing that power should be entrusted to responsibly minded people and experts in the face of a general public that was fickle, malleable and profoundly ignorant of the issues on which it was being asked for its opinion. Lippmann displays a kind of extreme nominalism, in that he considers notions such as the public interest and the general will to be non-existent and inscrutable abstractions; in his view, there are only specific problems and specific solutions of a technical nature.[32] An eminent figure of neoliberalism since the publication of *The Good Society* in 1937, he had initially devoted himself in the 1920s to analysing the political and intellectual transformation of Western countries (and the United States in particular), which had led to government policies being guided by public opinion.[33] These reflections were at the root of his 'constructive liberalism' of the following decade and the post-war conclusions he arrived at concerning the potentially ungovernable nature of democracies.

Neoliberals tend to justify this anti-democratic stance on the grounds that the masses are not blessed with the ability to acquire the requisite political skills or specialist knowledge – they do not have the necessary moral, aesthetic or intellectual qualities to govern themselves. Sometimes, this is imbued with a reactionary nostalgia for the kind of imperial or elite rule that was common before the First World War. In his book *Liberalism*, for example, Ludwig von Mises stated: 'Nothing, however, is as ill-founded as the assertion of the alleged equality of all members of the human race. Men are altogether unequal.'[34] But, whatever the philosophical justification for this neoliberal demophobia, the updaters of liberalism elevated the 'ungovernability' of mass society into the core issue for neoliberalism (and they did so well before the 1970s). Their strategic cleverness lay in

appreciating that, although they sought to act *against* the masses, they would inevitably need to work *with* the masses too, meaning that the masses would need to be turned against themselves. Mises acknowledged as much and thus encouraged his disciples to wage the war of ideas:

> It is true that the masses do not think. But just for this reason they follow those who do think. The intellectual guidance of humanity belongs to the very few who think for themselves. At first they influence the circle of those capable of grasping and understanding what others have thought; through these intermediaries their ideas reach the masses and there condense themselves into the public opinion of the time.[35]

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1 See Jean Solchany, 'The Problem Rather than the Solution: Democracy in the Neoliberal Worldview', *Review of Economic Philosophy*, vol. 17, no. 1, January 2016, pp. 135–69.

2 Ibid., pp. 159–60.

3 Ibid., p. 161.

4 In the sense in which Carl Schmitt used this term in 1932 and which was taken up by Hayek and Röpke (we'll return in Chapters 3 and 12 to the links between neoliberalism and the German social philosopher and economist).

5 Jurgen Reinhoudt and Serge Audier, *The Walter Lippmann Colloquium: The Birth of Neo-Liberalism*, Palgrave Macmillan, 2017, pp. 172–3.

6 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, vol. 3, pp. 137–8.

7 Ibid., p. 139.

8 Friedrich Hayek, *The Constitution of Liberty*, University of Chicago Press, 1978, p. 13.

9 That said, in a paper read to the Société française de philosophie on 17 June 1939, Aron argued that the 'idea of the sovereignty of the people is not an essential idea, because it can lead to despotism just as easily as liberty. After all, it is the popular majorities which, to a large extent, have abused their power.' Raymond Aron, 'Democratic States and Totalitarian States', trans. Anthony M. Nazzaro, *Salmagundi*, no. 65, Fall 1984, pp. 8–9.

10 TN: coined by Hayek, this term refers to the theory of how the free market system reaches exchange ratios and prices.

11 Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, University of Chicago Press, 1978, pp. 142–3.

12 Jacob Leib Talmon, *The Origins of Totalitarian Democracy*, Secker & Warburg, 1952. Another source of inspiration for Hayek was R. R. Palmer, *The Age of the Democratic Revolution, Volume 1: The Challenge*, Princeton University Press, 1959.

13 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 38.

14 Ibid., vol. 3, p. 4.

15 Ibid., vol. 3, p. 109.

16 Ibid., vol. 3, p. 15.

17 Ibid., vol. 2, p. 68.

18 Ibid., vol. 3, p. 151.

19 Ibid., vol. 3, p. 11.

20 See Friedrich Hayek, *The Fatal Conceit: The Errors of Socialism*, University of Chicago Press, 1988.

21 Walter Eucken, 'Staatliche Strukturwandlungen und die Krisis des Kapitalismus', *Weltwirtschaftliches Archiv*, vol. 36, 1932. Available in English in Thomas Biebricher and Frieder

Vogelmann, eds, *The Birth of Austerity: German Ordoliberalism and Contemporary Neoliberalism*, trans. Keith Tribe, Rowman & Littlefield, 2017 (ch. 3).

22 On this subject, see Pierre Dardot and Christian Laval, *Dominer. Enquête sur la souveraineté de l'État en Occident*, La Découverte, 2020, pp. 632ff. See also Chapter 12 of this book.

23 Wilhelm Röpke, *The Social Crisis of Our Time*, trans. Annette and Peter Schiffer Jacobsohn, Transaction Publishers, 1992, p. 86.

24 Eucken, 'Staatliche Strukturwandlungen und die Krisis des Kapitalismus'.

25 José Ortega y Gasset, *The Revolt of the Masses*, W. W. Norton & Co., 1932, p. 18. (In the original edition, the translation 'remains anonymous at the translator's request'.)

26 Louis Rougier, *La mystique démocratique. Ses origines, ses illusions*, Flammarion (Bibliothèque de philosophie politique), 1929 and *Les mystiques économiques. Comment l'on passe des démocraties libérales aux États totalitaires*, Librairie de Médicis, 1938.

27 Rougier, *Les mystiques économiques*, p. 14.

28 Ibid., p. 15.

29 Röpke, *Mass und Mitte*, Rentsch, 1950, p. 182.

30 Rougier, *Les mystiques économiques*, p. 11.

31 Wilhelm Röpke, *A Humane Economy: The Social Framework of the Free Market*, trans. Elizabeth Henderson, Henry Regnery, 1960, p. 130.

32 On Lippmann's concept of government by experts, see Barbara Stiegler, *'Il faut s'adapter': Sur un nouvel impératif politique*, Gallimard (NRF essays), 2019, pp. 35ff.

33 See Walter Lippmann, *Public Opinion*, Free Press Paperbacks, 1997 (1922).

34 Ludwig von Mises, *Liberalism: The Classical Tradition*, trans. Ralph Raico, Foundation for Economic Education, 1996 (1927), p. 28.

35 Ludwig von Mises, *Socialism – An Economic and Sociological Analysis*, trans. J. Kahane, Liberty Fund, 1981 (1927), p. 460.

3

Apology for a Strong State

It was the problem posed by the democratic masses for a ‘free economy’ that prompted the updaters of liberalism to completely reconceptualize the role of the state in the interwar years. In their view, the market could only work its magic in terms of prosperity and civilization as a whole on the condition that it was allowed to function freely. With various nuances, they all came to stress the need for a *strong state* to shield the market from democratic encroachments, thereby establishing from the very outset a connection between neoliberalism and authoritarianism. But what exactly does a strong state mean, and what are the various permutations that have been proposed?

What counted most for the neoliberals was to perfect a kind of state that radically departed from the interventionist path, orientated towards social protection, that states had taken since the end of the nineteenth century. This involved calling into question the representative, democratic state born with the French Revolution, which, with the spread of universal suffrage, had supposedly allowed parliamentary majorities to politicize the economy. This was all the more essential since the classical liberal ideology of laissez-faire had failed to immunize the economy against the risks of democratization.

The overall point of a strong state was therefore to prevent politics from affecting the free working of the market. This would initially entail some negative actions, such as dismantling the welfare state, resisting pressure from vested interests and, if need be, violently repressing any movements

that might interfere with the efficient functioning of the market. But there would also be a crucial positive component that would profoundly redefine the old laissez-faire relationship between state and economy, namely an interventionist approach by the state to guarantee the smooth working of the market and sanction anything that diverged from this goal – what Rüstow called the 'market-police': 'Right from the start, we assign to the strong and independent state the foundational task of market-police to secure economic freedom and complete competition.'[1] As Hayek argued, such interventionism is distinct from a laissez-faire attitude 'because a functioning market requires a framework of appropriate rules within which the market will operate smoothly'.[2]

Though there might have been minor differences, particularly over the forms of authoritarianism advocated or the extent to which violence should be used, there was no substantial divergence among neoliberals on the fundamental point. As Carl Schmitt noted, the various conceptions of a strong state differed only in degree or 'intensity', which was not decided in advance – it was proportionate to the threat that the enemy posed to the free market. This is one of the reasons why the term 'authoritarian liberalism' is a misnomer if used to imply that there is a type of neoliberalism that is not authoritarian.[3] Neoliberalism is intrinsically authoritarian in that it opposes all democratic attempts to regulate the market economy; the only difference lies in the forms of violence used by the state. It is a familiar refrain among neoliberals: a dictatorship or a democracy are of no interest in and of themselves – they are mere instruments for guaranteeing (or not) a free economy. In this respect, a strong state differs from a fascist state: open violence against opponents is not an essential principle but a matter of circumstance. Though, as Mises points out, this does not prevent a neoliberal state from exploiting fascist violence to crush the enemies of the market should the situation demand it.

Strong state, weak state

Without doubt, one of most crucial contributions to the neoliberal argument in favour of a strong state came from the jurist and legal philosopher Carl Schmitt. In his view, a strong state must set a basic political course quite independently from society so as to 'depoliticize' the economy, by which he

meant shielding the market economy from demands for social justice and the measures taken by governments to satisfy them. In July 1932, he criticized the Weimar Republic for being a 'weak state' because it gave in to the democratic pressure of the masses. In so doing, this 'weak state' became a 'total state', the adjective *total* designating the 'pure volume' of its interventions in every walk of human life:

> A pluralist Parteienstaat becomes 'total' out of weakness, not out of strength and power. The state intervenes in every area of life because it must fulfill the claims of all interested parties. It must especially become involved in the area of the economy, which, until now, was free of state interference, even if it forgoes any leadership in and political influence on the economy.[4]

Only a strong or authoritarian state, centred around the extraordinary powers of the president, can effect the necessary 'depoliticization', first and foremost, of the economy. In short, an authoritarian state is needed to buck the trend towards a total state. In a speech to German business leaders on 23 November 1932, Schmitt went further by identifying two types of total state: alongside this 'quantitative' total state, there was also a 'qualitative' version that was 'total in the sense of quality and energy. The fascist state calls itself a *stato totalitario*.'[5] Such a state appropriates exclusively for itself the levers of power, in particular modern weaponry and the new technical means of radio and cinema which allow for mass propaganda and an expansion of state power. Schmitt goes on to say:

> A state does not allow forces inimical to it, or those that limit or divide it, to develop within its interior. It does not contemplate surrendering new powers of coercion to its own enemies and destroyers, thus burying its power under such formulae as liberalism, rule of law, etc.[6]

Care should be taken here, however: the reference to the *stato totalitario* of Il Duce does not mean that Schmitt was equating the qualitative total state with the fascist state or advocating a fascist solution. As Olivier Beaud perceptively points out, this distinction between two types of total state 'merely echoes the distinction between a strong and a weak state, which is to say between the ideal state to come and the actual state of the present (of Weimar)'.[7] This qualitative total state is 'very strong', in that it alone is capable of freeing the state from what Schmitt calls in this paper a 'plurality of total parties' (the 'pluralist Parteienstaat' of *Legality and Legitimacy*).[8] But the state that he is advocating is not a Nazi or fascist state, or even one

inspired by the medieval guilds system; rather, it is a presidential state, which was the only type, in his view, that could save Germany from the twin perils of Nazism and communism.

Though they did not initially use the term ‘strong state’, the founding figures of German ordoliberalism anticipated Schmitt’s idea that the survival of economic liberalism depended on an authoritarian state. As early as 1923, Röpke was asserting that economic liberalism should be in the front line of the battle for the state.[9] In 1932, they all adopted Schmitt’s notion that a strong state was needed to dismantle the social democratic state (or the ‘weak state’ in their terminology). Walter Eucken lamented that state power no longer served its own ends because the ‘simultaneous process of democratisation lent the parties, and the masses and interest groups that they organised, much greater influence over the management of the state, and so upon economic policy’.[10] Rüstow, for his part, called for state-driven policies (*Staatspolitik*) capable of resisting the lobbying of vested interest groups (*Interessenpolitik*) – by the latter, he meant parliamentary democracies under assault from what he would later call ‘greedy self-seekers’.[11] The most remarkable thing is that Schmitt’s 1932 stance continued to fascinate a whole range of neoliberal thinkers, well beyond the German circle that gravitated towards him from 1932 onwards. In a footnote in *Law, Legislation and Liberty*, Hayek himself later acknowledged his debt to Schmitt in glowing terms: ‘This weakness of the government of an omnipotent democracy was very clearly seen by the extraordinary German student of politics, Carl Schmitt, who in the 1920s probably understood the character of the developing form of government better than most people.’[12]

A strong state immune to democratic pressure

The point of departure is as follows. To prevent an unlimited government of the masses and an interventionist welfare state, actual power needs to be entrusted to an oligarchy that respects tradition, customs and general rules that are as rigid as possible. But this appeal to the elites to assume full responsibility for defending the competitive order is not enough in itself. It has to be accompanied by the introduction of robust institutional safeguards to ensure the unity of the state and the smooth functioning of the market

economy according to certain fundamental laws. Democracy is viable over the long term only if the legal and political framework effectively limits the electoral power of the masses, as Röpke explains: ‘Democracy is, in the long run, compatible with freedom only on condition that all, or at least most, voters are agreed that certain supreme norms and principles of public life and economic order must remain outside the sphere of democratic decisions.’[13] These institutional safeguards need to be enshrined in the constitution so that they are safe from elected majorities and pressure groups.

For neoliberals, there is a crucial distinction between the democratic state that grew out of the French Revolution and the strong state, as the latter is not defined by social protection, central planning or state interventionism. On the contrary, it is a state that exists above the mêlée and is only powerful if it refuses to give in to vested interests. For some, including Röpke, its only role is to set and uphold the rules of a market-oriented society and preserve traditional ways of life. For others, such as Lippmann, the state must once again act constructively to create and maintain markets and to adapt society to the new industrial world founded on the division of labour: ‘In the time of Adam Smith and Jeremy Bentham, – from, say, 1776 to 1832 – liberalism was a philosophy which led the way in adapting the social order to the needs of the new industrial economy.’[14] Ideal, self-organizing markets do not in fact exist: ‘The improvement of the markets must be a subject of continual study in a liberal society. It is a vast field of necessary reform.’[15]

Rougier was one of the first French neoliberals to advocate a strong state that would not cave in to social justice demands and a political system that would not afford the masses any opportunity to upset the competition-based order. In his view, the route to achieving this lay in overhauling political institutions such that government and parliament were obliged to comply with a code of good economic conduct, from which they could not diverge. The neoliberal strategy that he elaborates in *La mystique démocratique* and *Les mystiques économiques* involves constructing a political order that is beyond the reach of ‘popular sovereignty’, and on which the authorities will impose their will over the various vested interests that might seek to ‘disrupt the machine’:

> Those wishing to return to liberalism will have to invest sufficient authority in governments for them to resist the pressure of organized private interest groups. And this will only be possible through constitutional reforms if a shift in public attitudes is achieved by highlighting the evils of state interventionism, dirigisme and central planning. All too often, these approaches consistently upset the economic balance to the detriment of the great masses of citizens-cum-consumers and to the very fleeting benefit of a small privileged group, as is abundantly illustrated by the Russian case.[16]

Rougier effectively set out the political goals of neoliberalism that others would develop theoretically and practically in his wake:

> Democrats need to reform themselves constitutionally such that those to whom they entrust the responsibilities of government do not consider themselves to be the representatives of business interests or popular whims but the guarantors of the public interest over and above vested interests; such that rather than purveying extravagant election promises, they damp down union demands. Their task should be to ensure that all the common rules for individual competition and collective agreements are respected, and to prevent vocal minorities or deluded majorities from upsetting the level playing field that should naturally select the elites, for the benefit of all.[17]

This call for a strong state that rises above vested interests was to become the trademark of neoliberalism. From the outset, right up to the present day, it has been its defining characteristic, and it also determines the modalities of its practical application. For Lippmann and his fellow neoliberals, a state that intervenes all the time is a weak state. So-called big government cannot operate efficiently – it is a giant tied down by Lilliputians. If vested interests succeed in winning the day, it is because they wield too much influence in the court of public opinion, the latter being not a strength but a congenital weakness of democracies. Governments must be allowed to govern in the public interest, particularly when it comes to critical decisions relating to war and peace, for example. Seeing himself as an heir to Thomas Jefferson, Lippmann believed the power of the people should be limited to appointing its rulers: the people should choose who governs them, not tell them what to do all the time. He rejected democratic theories propounded by the likes of Jeremy Bentham whereby rulers should espouse the majority view, which reflects the interests of the greatest number. It was this dogma of the will of the majority that was preventing governments from taking bold and necessary measures that went counter to the interests of the majority, preferring instead those that would be the least painful and most amenable to the masses.

Demarchy rather than democracy

All this talk of needing a strong state to counter vested interest groups runs into trouble, however, if one wishes to retain a democratic procedure for appointing rulers. As Hayek put it: 'The effective limitation of power is the most important problem of social order.'[18] The only legitimate interests to be taken legally into account are those of the individual, which are to be protected but also circumscribed by the 'universal rules of just conduct'. These formal rules constitute red lines not to be crossed by the representative political authority in the exercise of legislative and executive power. Any qualitative definition of democracy – along the lines of achieving the greatest happiness for the greatest number or improving people's standard of living – necessarily entails illegitimate coercion.

To avoid this degeneration of democracy in practice, Hayek elaborated a political system which placed limitations on state power, and which he called a *demarchy* – a term that he felt should replace democracy, which is 'tainted by long abuse'.[19] According to him, the problem with the word 'democracy' from the very start was that it was derived from the Greek verb *kratein*, which implied the use of 'brute force'; whereas *archein* combined with *demos* would give the more appropriate meaning of 'government by rule'.[20] The defining principle of a demarchy is that it cleaves to general rules in order to resist the unpredictable impulses of elected majorities, and it outlaws any measure that would accord privileges to one particular group or discriminate against another. Hayek thus took the word *isonomia* to mean equality *before* the law, whereas other commentators argue that for the Athenians it 'came also to mean equality through the law; that is, equality among all the citizens in their political rights [and] above all the right to participate in policy-making in the Council and the Assembly'.[21] The point of this reinterpretation is to exclude any deliberate attempt to correct the distribution of wealth and property. A progressive tax policy that applies different rates depending on income is seen as the epitome of non-equality before the law: the majority has no hesitation in practising 'discrimination against the wealthy', since it will not be imposing these abusive rates on itself.[22] Hayek is quite clear that the goal is to deprive governments subjected to popular pressure of the means to disrupt the market order:

> Once it is clearly recognized that socialism as much as fascism or communism inevitably leads into the totalitarian state and the destruction of the democratic order, it is clearly legitimate to provide against our inadvertently sliding into a socialist system by constitutional provisions which deprive government of the discriminating powers of coercion even for what at the moment may generally be regarded as good purposes.[23]

In the face of the danger posed to democracy by the extravagant demands of the masses, which are rendering societies 'ungovernable', all initiatives designed to protect individual rights and the market order are deemed legitimate by neoliberals.[24] But the range of permitted opinions is thereby restricted to those embraced by the champions of these fundamental values. Any other position, especially if it advocates equality or social justice, is perceived as an attack on freedom and the market and must therefore be banished from the arena of reasonable public debate. Though rivalries over coveted positions may indeed exist in an elitist democracy, entailing power games between political groupings, such jousting should not be allowed to unsettle the market order. Alternative solutions for dealing with such disruptive elements therefore need to be envisaged, and to this end one should even be entitled to call into question pluralist democracy.

When dictatorship becomes necessary

For the original neoliberals contending with communism and the spread of social democracy in the 1920s, dictatorship and recourse to state violence were conceived of as indispensable conditions for restoring the market in the face of its enemies. In 1929, in a piece entitled 'Diktatur innerhalb der Grenzen der Demokratie' (Dictatorship within the Bounds of Democracy), Rüstow argued for the chancellor's role to take the form of a 'time-limited dictatorship' (*befristete Diktatur*), whereby the chancellor could take certain measures and *then* seek parliamentary approval, thus in a sense upholding democracy.[25] In a similar vein, Röpke defended in 1942 the need for a 'genuine dictatorship' to combat the 'collectivist state', since 'in such a case of extreme emergency a more or less authoritative direction of the state becomes unavoidable' – while seeking, like Rüstow, to limit it to a 'temporary mandate to be restored to the legitimate authority once the emergency for the state is over'.[26] This was a nod to Schmitt's concept of '"commissarial" dictatorship' – that is, a temporary regime pursuant to the

declaration of a state of emergency.[27] The aim of such a dictatorship is to restore a state of law and order, having eradicated from civil society the illegitimate political forces under whose sway it has fallen. Schmitt distinguishes this from a 'sovereign dictatorship' that emancipates itself from any existing constitutional order.[28] Two years earlier, in a letter to Marcel van Zeeland dated 20 October 1940, Röpke had already adopted Schmittian language to support a more fascist form of 'dictatorial democracy' that disregarded the limitations on the duration of a dictatorship in a state of law and order:

> It is possible that in my opinion of the 'strong state' (*le gouvernement qui gouverne*) I am even 'more fascist' [*faschistischer*] than you yourself, because I would indeed like to see all economic policy decisions concentrated in the hands of a fully independent and vigorous state weakened by no pluralist authorities of a corporatist kind . . . I seek the strength of the state in the intensity, not the extensiveness, of its economic policies . . . I share your opinion that the old formulas of parliamentary democracy have proven themselves useless. People must get used to the fact that there is also presidential, authoritarian, yes even – *horribile dictum* [horrible to say] – dictatorial democracy.[29]

There is no doubt that Hayek, who later wrote an introductory article to one of Röpke's key works, was aware of these precedents, just as he was familiar with the arguments of Mises (to whom he was close in Vienna) justifying the temporary use of fascist violence to protect private property, as we will see at the end of this chapter.[30]

As for Alfred Müller-Armack, he had, like Schmitt, admired Italian fascism since the 1920s, seeing it as an alternative to the unbridled interventionism of a parliamentary state.[31] But he differed from him in that he saw the 'total state' not only as a means of preventing the masses from politicizing socio-economic relations but also of imposing a different political slant on those relations, wherein the state became synonymous with enterprise and competition. The ultimate objective was still the freedom of the 'entrepreneur', but this was to be achieved 'by means of the complete integration of the economic into the state, the state attains room for manoeuvre for the sphere of private initiative which, no longer limiting the political sphere, coincides with the political'.[32] In other words, the goal was not so much a state that rose above all vested interests, but a state of *private interests*. In 1933, Müller-Armack, who coined the term 'social market economy', became a member of the Nazi Party, began advising Hitler's regime and the German army and published a book praising Nazism

entitled *Staatsidea und Wirtschaftsordnung im neuen Reich* (Ideas of the State and Economic Order in the New Reich), in which he described *Mein Kampf* as a 'fine book'.[33] He also portrayed National Socialism as a new plebiscite-based form of democracy centred around the *Volk* and the *Führer*, whereby a weakened people could become revitalized through embracing the entrepreneurial state order preached by the leader. For Müller-Armack, the 'total state' meant both a state exercising its sovereignty in favour of entrepreneurial freedom and a state that 'suppresses the class struggle'.[34] It is to such a system that the term 'liberal fascism' may be appropriately applied.

But, as Werner Bonefeld points out, the difference between Müller-Armack's total state (the entrepreneurial politicizing of the economy) and the strong state (social depoliticizing of the economy) advocated by Eucken, Rüstow and Röpke is relatively minor:

> the one requires the political organisation of an economic order to secure the freedom of entrepreneurial decision making on the basis of a domesticated labour movement, formatting workers as disciples of order, and the others declare for the forceful depoliticisation of society, formatting workers as self-disciplined entrepreneurs of labour power.[35]

The ordoliberal project, whereby the state instils order in the economy (*Ordnungspolitik*) was not shelved in the Nazi era. On the contrary, it 'doubtless exerted a considerable influence on the teaching of economics'.[36] In the early 1940s, ordoliberals including Eucken, Franz Böhm and Leonhard Miksch belonged to the Academy for German Law, which from 1934 onwards was tasked with 'implementing the National Socialist programme in the general domain of the law', and they contributed to its sixth volume entitled *Competition as a Means of Increasing Productivity and Quality in the Economy*.[37] It was also under the Third Reich, in 1937, that Eucken, Böhm and Hans Grossmann-Doerth launched their 'Ordnung der Wirtschaft' (economic order) collection in which they defined the market economy as a system where compliance with the dictates of the market was ensured by the political order of the state, which possessed the necessary 'means of surveillance' to guarantee the 'reasonable and disciplined application' of those dictates.[38] Though the ordoliberal economic vision was not translated into practice in the Nazi war economy, which favoured central planning, the regime considered it to be

the model to implement once peace returned. In the meantime, the Nazi jurist Ernst Rudolf Huber drew on the ordoliberal notion of 'market-police' to furnish the Nazis with an acceptable definition of *obedient freedom*.[39] 'It is an economy with parameters since it recognizes that the laws enforced by the state are binding norms that apply to it in a fundamental way too. But it possesses freedom in the highest sense of the word because its relationship to the state in which it is embedded is defined not by constraint but by voluntary obedience.'[40] As the German economic historian Werner Abelshauser has pointed out, the 'social market economy' that came to the fore after the Second World War under the auspices of Ludwig Erhard did not come out of the blue – it was already embedded as a solid institutional possibility within the Nazi state apparatus.

Ludwig von Mises, or how fascist violence can serve the interests of liberalism

Does this predilection for dictatorship imply the active embrace of state violence and brutal police repression of dissent from the outset, or did neoliberalism take a monstruous turn by unhappy accident? In order to answer this question, we need to return once again to the origins of neoliberalism and, more specifically, to the figure of Ludwig von Mises in 1920s Austria – even before Carl Schmitt was advocating a strong state to guarantee a free economy and arguing against the social policies of the Weimar Republic.[41] In 1909, the twenty-seven-year-old Mises started working at the Vienna Chamber of Commerce on the Ringstrasse. Hayek obtained his first job there in 1921, working with Mises for eighteen months as a civil servant and then returning to work in the same building in the second half of the 1920s at the Institut für Konjunkturforschung (an economic research institute founded by Mises) in the company of another Mises protégé, Gottfried Haberler. This was also where Mises held a private seminar for fourteen years (1920–34), attended by Fritz Machlup and, more sporadically, by Lionel Robbins and Frank Knight. All these intellectuals who orbited Mises would go on to become members of the Mont Pelerin Society after the Second World War.[42] They used to gather at Café Künstler after their theoretical discussions, where they would sing *Lieder* that they had composed, praising the seminar in the poetic style of Karl Kraus. One

of these references their central challenge of thoroughly reinventing liberalism:

> I call myself a liberal / But not from days of yore. I say all things differently / Than those who came before. A liberal can anyone be / But in Vienna alone the reasons see. I know this 'cause marginal utility / Sheds light on economy.[43]

Mises claimed to belong to the tradition of classical liberalism, but, in reality, he was *retrospectively inventing tradition* – he is better seen as the founder of a new type of liberalism than a perpetuator of the old kind, since he was the architect of a radical redefinition of liberalism centred around the principle of private property: 'The program of liberalism, therefore, if condensed into a single word, would have to read: *property*, that is, private ownership of the means of production . . . All the other demands of liberalism result from this fundamental demand.'[44] The charge of 'paleoliberalism' (of remaining attached to a laissez-faire ethos) levelled at him by German ordoliberals does not stand up either.[45] Contrary to the impression sometimes given by contemporary American libertarians, he always insisted that the 'state is an absolute necessity, since the most important tasks are incumbent upon it: the protection not only of private property, but also of peace, for in the absence of the latter the full benefits of private property cannot be reaped'.[46] Indeed, he went further and asserted that the state 'must not only be able to protect private property; it must also be so constituted that the smooth and peaceful course of its development is never interrupted by civil wars, revolutions, or insurrections'.[47]

After becoming the secretary of the Vienna Chamber of Commerce in 1918, Mises played a leading role in advising the conservative government of Ignaz Seipel following the crisis of 1922–23. Referring to this period, Quinn Slobodian observes: 'Mises's policy prescriptions in the 1920s always had two sides: open to the world market, and make the internal adjustments necessary to compete internationally.'[48] For Austria, Mises advocated the development of global free trade and a return to the gold standard to combat hyperinflation and stabilize the Austrian schilling, which domestically meant reducing public expenditure, radically downsizing the civil service, privatizing state-owned companies,

eliminating food subsidies and cutting salaries.[49] These measures put hundreds of thousands of Austrians out of a job.[50]

In 1927, the year that *Liberalismus* was published, Mises found that events were confirming his theoretical ideas. In July, following the acquittal of three far-right *Frontkämpfer* militants, who had been accused of killing a worker and a child in a working-class neighbourhood six months earlier, personnel at the city's electricity works downed tools. The strike spread to other sectors and took an insurrectional turn when protesters set fire to the seat of the Supreme Court. The ensuing crackdown was brutal: the head of police was granted emergency powers and gave the order to open fire on the demonstrators gathered in the city centre. The police then hunted down others who had fled to residential neighbourhoods. A total of eighty-nine people lost their lives and a thousand were injured. Mises was prompted to write to a friend: 'Friday's putsch has cleansed the atmosphere like a thunderstorm. The social democratic party has used all means of power and yet lost the game. The street fight ended in complete victory of the police . . . All troops are loyal to the government.'[51] His satisfaction at the effectiveness of the crackdown was of a piece with his theoretical outlook. He had after all opined: 'If judicious men see their nation . . . on the road to destruction . . . they may be inclined to think it only fair and just to resort to any means whatever . . . in order to save everyone from disaster.' In this context, 'the idea of a dictatorship of the elite, of a government by the minority maintained in power by force and ruling in the interests of all, may arise and find supporters'.[52] Though he believed that such a minority government, reliant on force, could not exist indefinitely and would ultimately require majority consent in order to govern without recourse to repression, he was by no means opposed to such a scenario per se. On the contrary, he was quite explicit in his theoretical writings about what he called the 'argument of fascism', which consisted not so much of an unreserved endorsement of fascism as an analysis of its role as the *guardian of civilization* for liberalism.

In his view, liberalism had achieved such a hegemony in the nineteenth century that its opponents were unable to contest its principles. This situation only changed when the Marxist social democrats – the parties of the Third International – took power after the First World War in Central and Eastern Europe and jettisoned all concessions to liberal ideology. They were prepared to resort to the most extreme acts of violence to eliminate

dissidents, which, in turn, gave rise to an opposition movement of militaristic and nationalistic enemies. Unlike the Marxists, the members of this movement initially respected the principles of liberalism, but came to realize that these principles were hindering them and that excessive liberal tolerance had facilitated the victories of the Third International since 1917. Mises concluded that the 'fundamental idea of these movements – which, from the name of the most grandiose and tightly disciplined among them, the Italian, may, in general, be designated as Fascist' was to employ the same methods as the enemy.[53] However, he identified a fundamental distinction between the Bolsheviks and the fascists, the latter having 'not yet succeeded as fully as the Russian Bolsheviks in freeing themselves from a certain regard for liberal notions and ideas and traditional ethical precepts'.[54] The reason is that the fascists belonged to nations 'in which the intellectual and moral heritage of some thousands of years of civilization cannot be destroyed at one blow', whereas the Russian Bolsheviks are 'barbarian peoples on both sides of the Urals, whose relationship to civilization has never been any other than that of marauding denizens of forest and desert accustomed to engage, from time to time, in predatory raids on civilized lands in the hunt for booty'. This anthropological difference explains why 'Fascism will never succeed as completely as Russian Bolshevism in freeing itself from the power of liberal ideas'.[55] The entry of the fascists into bloody combat was an 'emotional reflex action evoked by indignation' at the atrocities committed by the Bolsheviks, but, once this initial anger had passed, Mises expected their politics to resume a more moderate course since 'traditional liberal views still continue to have an unconscious influence on the Fascists'. They were a lesser evil, whose actions could not be compared to the 'senseless and unrestrained destructionism that has stamped the Communists as the arch-enemies of civilization'. With such remarks, Mises is rehabilitating and justifying fascism, just as he justified the temporary abandonment of liberal morality. But he goes even further:

> Now it cannot be denied that the only way one can offer effective resistance to violent assaults is by violence . . . No liberal has ever called this into question. What distinguishes liberal from Fascist political tactics is not a difference of opinion in regard to the necessity of using armed force to resist armed attackers, but a difference in the fundamental estimation of the role of violence in a struggle for power.[56]

Defenders of liberalism are entitled to use arms and state violence if civilization itself is imperilled. To make sense of this notion of legitimate violence, we need to be clear on exactly what Mises means by *civilization*, the defence of which is at the heart of the thinking of early Austrian neoliberal economists.[57] As we have seen, its one true foundation is the 'private ownership of the means of production', an assertion that in his view 'requires no defense, justification, support, or explanation'. And, given that 'society can continue to exist only on the foundation of private property', it follows that defenders of civilization must also defend private property.[58] By the same token, 'whoever wishes to criticize modem civilization, therefore, begins with private property', but, in so doing, they place themselves in opposition to civilization and will have to bear the full brunt of the counter-attack by civilization's champions.[59]

The difference between liberals and fascists does not therefore lie in the necessary recourse to state violence but in their respective strategies for hanging on to power over the longer term. For fascists, violence is the fundamental and *permanent* means to this end, but Mises believes that this approach is doomed to failure in the long run. Liberalism, by contrast, is defined by the *conditional* use of violence over the short term and the subsequent winning of majority public support, which can only be achieved by the 'weapons of the intellect, never by force'.[60] On the one hand, fascism should be given due credit:

> It cannot be denied that Fascism and similar movements aiming at the establishment of dictatorships are full of the best intentions and that their intervention has, for the moment, saved European civilization. The merit that Fascism has thereby won for itself will live on eternally in history.

On the other hand, it is by nature an 'emergency makeshift. To view it as something more would be a fatal error.'[61]

In 1933, Engelbert Dollfuss, who had become Austrian chancellor the year before, decreed a state of emergency, abolished the parliamentary republic and ushered in an authoritarian regime. He nurtured ties with Fascist Italy and founded a fascist political movement called the *Vaterländische* Front (Fatherland Front). Mises joined in March 1934 and, having remained head economist at the Chamber of Commerce, became one of Dollfuss's most trusted economic advisors. In *Human Action*, his

magnum opus of 1949 that was seen as a manifesto for economic freedom, he once again stated:

> The state, the social apparatus of coercion and compulsion, does not interfere with the market and with the citizens' activities directed by the market. It employs its power to beat people into submission solely for the prevention of actions destructive to the preservation and the smooth operation of the market economy . . . Thus the state creates and preserves the environment in which the market economy can safely operate.[62]

The violence to which Mises refers has nothing to do with the legal use of force, on which the state, according to Max Weber, has a monopoly; rather, he is describing a brutal violence used intentionally by the state to defend the market order against the democratic demands of society.

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1 Alexander Rüstow, 'Vom Sinn der Wirtschaftsfreiheit', *Blätter der Freiheit*, vol. 6, no. 6, June 1954, pp. 217–22, cited in Werner Bonefeld, *The Strong State and the Free Economy*, Rowman & Littlefield, 2017, p. 3.

2 Friedrich Hayek, 'Socialism and Science: A Lecture Delivered to the Economic Society of Australia and New Zealand (Canberra Branch), on 19 October 1976', *IPA Review*, October–December, 1976, p. 94.

3 For a critique of the notion of 'authoritarian liberalism' and its application to neoliberalism, see Chapter 12.

4 Carl Schmitt, *Legality and Legitimacy*, trans. Jeffrey Seitzer, Duke University Press, 2004 (1932), p. 92.

5 Carl Schmitt, 'Strong State and Sound Economy: An Address to Business Leaders' (1932), in Renato Cristi, *Carl Schmitt and Authoritarian Liberalism*, University of Wales Press, 1998, Appendix, p. 217.

6 Ibid.

7 Olivier Beaud, *Les derniers jours de Weimar. Carl Schmitt face à l'avènement du nazisme*, Descartes & Cie, 1997, p. 71.

8 Schmitt, 'Strong State and Sound Economy', p. 219.

9 Wilhelm Röpke, 'Wirtschaftlicher Liberalismus und Staatsgedanke', *Hamburger Fremdenblatt*, no. 314, 13 November 1923, cited in Bonefeld, *The Strong State and the Free Economy*, p. 37.

10 Walter Eucken, cited in Thomas Biebricher and Frieder Vogelmann, eds, *The Birth of Austerity – German Ordoliberalism and Contemporary Neoliberalism*, trans. Keith Tribe, Rowman & Littlefield, 2017, Chapter 3, pp. 51–72.

11 'Die staatspolitischen Voraussetzungen des wirtschaftspolitischen Liberalismus', 1963, cited in Werner Bonefeld, 'Adam Smith and Ordoliberalism – On the Political Form of Market Liberty', *Review of International Studies*, vol. 39, no. 2, April 2013 (2012), p. 244.

12 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, vol. 3, p. 194.

13 Wilhelm Röpke, *A Humane Economy – The Social Framework of the Free Market*, trans. Elizabeth Henderson, Henry Regnery, 1960, p. 69.

14 Walter Lippmann, *The Good Society*, Transaction Publishers, 2005, p. 208.

15 Ibid., p. 221.

16 Louis Rougier, *La mystique démocratique. Ses origines, ses illusions*, Flammarion (Bibliothèque de philosophie scientifique), 1929, p. 10.

17 Ibid., pp. 18–19.

18 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 128.

19 Ibid., vol. 3, p. 41. See Pierre Dardot and Christian Laval, *Ce cauchemar qui n'en finit pas. Comment le néolibéralisme détruit la démocratie* (Neverending Nightmare: The Neoliberal Assault on Democracy), La Découverte (Petits cahiers libres), 2016, pp. 55ff.

20 Hayek, *Law, Legislation and Liberty*, p. 40. It is ironic that Hayek, without realizing it, should reiterate a very ancient rejection of *kratos* in favour of *archè*: the former unambiguously means the victory of the people against the oligarchy, whereas the latter conveys a sense of institutional power enduring. See Nicole Loraux, *La cité divisée. L'oubli dans la mémoire d'Athènes*, Payot (Petite bibliothèque Payot), 2005, p. 55.

21 Moses Finley, *Politics in the Ancient World*, Cambridge University Press, 1983, p. 139.

22 Friedrich Hayek, *The Constitution of Liberty*, University of Chicago Press, 1978, p. 313. One finds the same argument among the theoreticians of the Virginia School. In *The Calculus of Consent – The Logical Foundations of Constitutional Democracy* (University of Michigan Press, 1962, p. 77), James Buchanan and Gordon Tullock describe measures such as progressive tax legislation as 'differential or discriminatory' and propose that fiscal policy be decided on the basis of unanimity, with every taxpayer having a right of veto.

23 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 151.

24 This was the conclusion reached by Samuel Huntington in the famous task force report no. 8 presented to the trilateral commission in Kyoto in May 1975: 'We have come to recognize that there are potentially desirable limits to economic growth. There are also potentially desirable limits to the indefinite extension of political democracy.' Michel Crozier, Samuel Huntington and Joji Watanuki, *Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission*, New York University Press, 1975, p. 115.

25 Alexander Rüstow, 'Diktatur innerhalb der Grenzen der Demokratie', *Vierteljahrshefte für Zeitgeschichte*, vol. 7, 1929, Institut für Zeitgeschichte (ifzmuenchen.de), p. 99.

26 Wilhelm Röpke, *International Economic Disintegration*, William Hodge & Company, 1942, pp. 246–7.

27 Ibid., p. 247, fn. 3.

28 See Carl Schmitt, *Dictatorship*, trans. Michael Hoelzl and Graham Ward, Polity Press, 2014.

29 Wilhelm Röpke, letter to Marcel van Zeeland, 20 October 1940, quoted in Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism*, Harvard University Press, 2018, p. 116.

30 See Friedrich Hayek, H. Sieber, E. Tuchtfeldt and H. Willgerodt, 'Wilhelm Röpke – Einleitende Bemerkungen zur Neuausgabe seiner Werke', in Wilhelm Röpke, *Die Lehre von der Wirtschaft*, Haupt, 1993, pp. v–xxxvi.

31 See Rolf Kowitz, *Alfred Müller-Armack: Wirtschaftspolitik als Berufung. Zur Entstehungsgeschichte der Sozialen Marktwirtschaft und dem politischen Wirken des Hochschullerers*, Deutscher Institutverlag, 1998.

32 Alfred Müller-Armack, *Entwicklungsgesetze des Kapitalismus*, Junker and Dünnhaupt, 1932, cited in Bonefeld, *The Strong State and the Free Economy*, p. 38.

33 See Alfred Müller-Armack, *Studien zur Sozialen Marktwirtschaft*, Institut für Wirtschaftspolitik, 1960 and *Staatsidea und Wirtschaftsordnung im neuen Reich*, Jünker and Dünnhaupt, 1933, cited in Bonefeld, *The Strong State and the Free Economy*, p. 38.

34 Ibid.

35 Ibid., p. 39.

36 Werner Abelshauser, 'Aux origines de l'économie sociale de marché. État, économie et conjoncture dans l'Allemagne du XXe siècle', *Vingtième siècle*, no. 34, April–June 1992, p. 188 (based on a 1991 presentation at the School for Advanced Studies in the Social Sciences (EHESS)).

37 Günther Schmölders (ed.), *Der Wettbewerb als Mittel volkswirtschaftlicher Leistungssteigerung und Leistungsauslese*, Duncker & Humblot, 1942.

38 Franz Böhm, *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung*, 1937, cited in ibid., p. 189.

39 The term was used for the first time by Rüstow, 'General Sociological Causes of Economic Disintegration and the Possibilities of Reconstruction', in Wilhelm Röpke, *International Economic Disintegration*, William Hodge & Company, 1942, p. 289.

40 Ernst Rudolf Huber, *Die Gestalt des Deutschen Sozialismus*, Hanseatische Verlagsanstalt, 1934, cited in Abelshauser, 'Aux origines de l'économie sociale de marché', p. 189.

41 There was a marked political divide in Austria in the early 1920s between the very conservative Christian Social Party, whose chairman was Chancellor Ignaz Seipel and the Social Democratic Party of Austria, whose deputy leader was Otto Bauer. The Social Democrats, who were standard-bearers of Austromarxism, held power in so-called Red Vienna, where from 1918 to 1934 they conducted a highly innovative experiment in municipal socialism involving the construction of social housing, social protection schemes for families and children and improvements in public education.

42 Philip Mirowski and Dieter Plehwe, *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective*, Harvard University Press, 2009, p. 11.

43 Ludwig von Mises, *Memoirs*, LVMI, 2009, p. 81, cited in Janek Wasserman, *The Marginal Revolutionaries: How Austrian Economists Fought the War of Ideas*, Yale University Press, 2019, p. 122.

44 Ludwig von Mises, *Liberalism: The Classical Tradition*, trans. Ralph Raico, Foundation for Economic Education, 1996 (1927), p. 19.

45 See, for example, Rüstow, 'Vom Sinn der Wirtschaftfreiheit', p. 221.

46 Mises, *Liberalism*, p. 39.

47 Ibid.

48 Slobodian, *Globalists*, p. 43.

49 See Jörg Guido Hülsmann, *Mises: The Last Knight of Liberalism*, Mises Institute, 2007, p. 458.

50 See Wasserman, *The Marginal Revolutionaries*, p. 250.

51 Mises, quoted in Slobodian, *Globalists*, p. 44.

52 Mises, *Liberalism*, p. 45.

53 Ibid., p. 48.

54 Ibid.

55 Ibid., pp. 48–9.

56 Ibid., pp. 49–50.

57 See Erwin Dekker, *The Viennese Students of Civilization: The Meaning and Context of Austrian Economics Reconsidered*, Cambridge University Press, 2016.

58 Mises, *Liberalism*, p. 87.

59 Ibid., p. 49–50.

60 Ibid., p. 50.

61 Ibid., p. 51.

62 Ludwig von Mises, *Human Action: A Treatise on Economics*, Mises Institute, 1998 (1949), p. 257.

4

Political Constitutions and Constitutionalizing the Market

At first sight, it might seem difficult to square the neoliberals' predilection for the most authoritarian form of the strong state (and for fascism even) with their almost unanimous insistence on absolute compliance with the law. How can you advocate for a strong state while insisting that its actions be constrained by the law? What is the relationship between a strong state and state sovereignty? Neoliberals have often expressed a deep mistrust of the very notion of sovereignty, not least Hayek: 'The concept of sovereignty, like that of the "state", may be an indispensable tool for international law . . . But for the consideration of the problem of the internal character of a legal order, both concepts seem to be as unnecessary as they are misleading.'[1] And yet, elsewhere, he defines the state as the 'organization of the people of a territory under a single government', meaning that it retains for him an important role as an 'indispensable condition for the development of an advanced society'.[2] In fact, as we saw in Chapter 2, it is the notion of 'popular sovereignty' that is singled out for criticism as a 'constructivist superstition' – as the erroneous belief that power which rests exclusively on a popular majority should be unlimited.[3] Contrary to the traditional perspective, which places the sovereign above the law, the Hayekian view is that the 'majority of the people (or its elected representatives)' do not have the right to tinker with the fundamental laws of the market which protect the rights of individuals.[4] In other words, any

legislative or executive measure must stringently comply with the constitution – a condition that seriously restricts a government's room for manoeuvre when it comes to economic policy. On the other hand, state authorities must have complete latitude to defend these fundamental laws from any encroachment by collective interests, those authorities being the sole rightful judges of the public interest. Commentators have been rather quick to characterize this as a theory of 'constitutional sovereignty', but the term is misleading: it fails to capture the essence of this perspective while giving the impression that the constitution has somehow arisen of its own accord, rather than being a deliberate human construction. But, as Hayek was well aware from reading Schmitt, all constitutions require a superior constituent power for their elaboration and promulgation.[5] So, the term he uses is 'sovereignty of law', which he explicitly distinguishes from the 'sovereignty of Parliament' and assimilates to the rule of law (sovereignty, along with reign and supremacy, being synonyms for rule).[6] For, whereas a constitution is constructed, the law is 'self-generating'.[7] What he has in mind is private law, which encompasses commercial and criminal law and takes precedence over collective demands in a social system where each individual pursues personal goals without reference to those of others beyond the contractual transactions which serve their interests. Individual economic rights should no longer serve merely as abstract reference points, and they certainly should not be excluded from the sphere of the law; rather, they should be enshrined in certain laws, which is to say *constitutionalized*.

Political constitutions and economic constitutions

But what exactly is meant by this? How does *constitutionalization* relate to the constitution? And how are we to interpret the typically neoliberal idea of an *economic* constitution? We need to start by clearing up any confusion. In adopting this perspective, the point is not to identify specific historical constitutions as economic texts, as for example Charles Beard did in his 1913 book on the constitution that resulted from the Constitutional Convention in Philadelphia. In that work, he was highly critical of representative democracy and sought to deconstruct the founding myth, according to which this constitution had been drafted by 'the whole people'.[8] His goal was to lay bare, beneath all the talk of 'fundamental law',

the private-property interests of the majority of delegates present at the convention. Most of the fifty-five attendees were industrialists, traders or state bondholders who had a vested interest in the creation of a federal government, unlike the indebted farmers protesting against the high tax burden imposed on them for the servicing of state debts.[9] By contrast, the aim of the neoliberals was to accord supreme status to private-property rights by enshrining them in the constitution. As Violaine Delteil and Lauréline Fontaine point out, 'there's a difference of register between an "economic constitution" and a "constitution as an economic document"'.[10] Whereas the European Union conferred a constitutional status on economic issues that subsequently required political endorsement, private-property rights are simply a given in Charles Beard's reading and only receive the constitutional seal of approval from a later constitutional government – they do not originally have any constitutionality in and of themselves. This distinction serves to highlight the originality of neoliberalism: it enshrines the constitution in the economic order through the law, without assuming that it will necessarily be incorporated into the political constitution of a state. Initially, in the 1930s, Eucken and Böhm, two of the founders of German ordoliberalism, used the term 'economic constitution' in the descriptive sense (denoting a given sociological reality), but also in a normative sense to denote a desired legal order. In other words, they were not using 'economic constitution' in a literal sense, any more than they were arguing for such a constitution to be enshrined in a founding legal document.[11] To put it another way, it is possible to have the rigour of 'the economic constitution without the constitution'.[12]

The recent history of neoliberal government demonstrates the many forms that this process of constitutionalization can take. In the case of the European Union, it is worth noting that the Treaty of Lisbon does not have the formal status of a constitution – it is more accurately described as an accord between states that has constitutional value, which is not the same thing. Nevertheless, it contains a kind of *European economic constitution* (especially its third part) that sets out the famous golden rules (monetary stability, balanced budgets and fair, non-distorted competition). The seal of constitutionality was thus conferred on these rules without waiting for the hypothetical elaboration of a European constitution of the classic state kind. Or to put it rather more incisively, this constitutionalization meant that it was possible to do without a supranational constitution, which would no

doubt have encountered strong opposition. In Brazil in 2016, the conservative president Michel Temer paved the way for Bolsonaro by introducing constitutional amendments to freeze public expenditure for twenty years, and Bolsonaro himself amended the constitution to get through his pension reforms. On both occasions, the desired policy was implemented thanks to a constitutional amendment, illustrating the point that constitutionalization need not necessarily involve the elaboration of a new constitution (as in Chile), nor even the enshrining of an economic constitution within an existing political constitution. It seems legitimate to use the word *constitutionalism* here, so long as we do not take at face value Hayek's definition ('constitutionalism means limited government'), which omits the central element: governments are limited by *private law*.[13] What we will term *market constitutionalism* involves elevating private law (encompassing commercial and criminal law) to the status of constitutional law, which may or may not be enshrined in a political constitution. This separation of constitutionalism from political constitutions is made perfectly explicit in Hayek's theoretical writings.

The 'model constitution'

In Chapter 17 of *Law, Legislation and Liberty*, Hayek imagines a 'model constitution' that will guarantee an effective separation of powers. His aim is not to propose a model for immediate implementation, however, nor to suggest that all countries should replace their present constitutions with something along the lines of his model. Exempt from this need would be nations which can boast a solid constitutional tradition, such as those of the English-speaking world along with Switzerland and the smaller countries of Northern Europe. This is where the common law tradition prevails, which is resistant to any artificially constructed legal model. But this does not stop Hayek from reviewing British history from the seventeenth century onwards and regretting the fact that, with two Houses of Parliament, the opportunity was not seized to introduce a clear separation between the power to amend laws (or 'rules of just conduct') and the 'control of the conduct of government'. The House of Lords could have 'retained ultimate control of the development of the rules of common law', while the Commons 'obtained full power over the apparatus of government and all

the material means put at its disposal'.[14] As for countries that do not have a strong constitutional tradition, it would be necessary to 'transplant' the fundamental principles implicit in this tradition into their new constitutions.[15] Hayek sent a copy of his *Constitution of Liberty* to the dictator Salazar accompanied by a letter in which he expressed the hope that his 'preliminary sketch of new constitutional principles' would assist the leader 'in his endeavour to design a constitution which is proof against the abuses of democracy', thereby implying that Portugal's highly presidential constitution of 1933 was insufficiently protected in that regard.[16] The political intentions behind this 'preliminary sketch' would seem to be clear enough from this remark.

But what, then, are the basic principles of such a constitution? Perhaps something akin to a declaration of fundamental rights, which tends to serve as a preamble to most constitutions? Far from it. The key element of a constitution should be a clause whose purpose is strictly to limit any curtailment of individual rights or imposition of individual duties:

> The basic clause of such a constitution would have to state that in normal times, and *apart from certain clearly defined emergency situations*, men could be restrained from doing what they wished, or coerced to do particular things, only in accordance with the recognized rules of just conduct.[17]

We will see later on what he had in mind with these emergency situations. But the key point is that this basic clause must set out the logical, formal criteria required of any law. Its purpose is *not* to define a government's prerogatives but solely to set out the limits of its powers of coercion. From Hayek's perspective, such a clause renders superfluous the standard enumeration of fundamental rights to be found in traditional declarations, which frame individual rights as freedom from arbitrary constraints, because the 'rules of just conduct' *already* guarantee this. In other words, fundamental rights are subordinate to these general legal rules. For Hayek, to elevate them to a sacrosanct status is to imply that they are the only rights that really matter and that the government may ignore these legal provisions in other domains and resort to coercion. The problem in Hayek's view is that so-called 'social and economic rights' are thoroughly incompatible with the rules of just conduct in that they authorize governments to impose constraints on individuals in the name of 'social justice', though their true motive is to favour the interests of particular groups.[18]

A curious separation of powers

Strictly understood, the implication of Hayek's basic clause is that a government cannot claim the power to elaborate or amend the rules of just conduct, while the legislature cannot intervene in the government's accepted sphere of action. This distinction between private law and public law should be reflected in a bicameral system, wherein a legislative assembly would take care of the former and a governmental assembly the latter. Only a clear demarcation of the respective responsibilities of these assemblies can ensure an effective separation of powers. It is the exclusive prerogative of the legislative assembly to promulgate new rules of just conduct or amend the old ones in such a way as to avoid any interference in the tasks that fall solely within the government's remit. Hayek compares the work of the members of this assembly to that of the *nomothetae* of Ancient Greece but disregards a major difference.[19] These nomothetes formed a jury, drawn by lot from the members of the courts, which, from the fourth century BCE onwards, was responsible for renewing constitutional laws; whereas Hayek's legislative assembly, made up of judges and experts, is not responsible for amending the constitution per se but rather the abstract principles of private law. As we will see shortly, responsibility for the constitution should fall to another body, though he is not particularly forthcoming when it comes to the details of this body. Unlike their illustrious Greek predecessors, Hayek's nomothetes busy themselves with modifying rules that are not enshrined in the constitution, but this confusion is revealing: Hayek is assimilating rules set down by private law with rules that have constitutional validity – that is, constitutional laws. We are thus perfectly justified in speaking of a *constitutionalization* of private law. However (and the point is worth emphasising), constitutionalization in this context does *not* mean enshrining private law in the constitution itself, as was advocated by the German ordoliberals. Hayek instead sees the constitution as a 'protective superstructure':

> Strictly speaking, a Constitution ought to consist wholly of *organizational* rules, and need touch on substantive law in the sense of universal rules of just conduct only by stating the general attributes such laws must possess in order to entitle government to use coercion for their enforcement.[20]

The result is a rather curious constitution. Admittedly, as with any constitution, it is 'chiefly concerned with the organization of government and the allocation of the different powers to the various parts of this organization'.[21] But it does not set out the fundamental rights that individuals enjoy under the various authorities they are instituting, nor does it state any fundamental laws in the normal sense of this term. It does formally define what characteristics a law should have to qualify as such, but it leaves it up to the legislature or judiciary to elaborate the content of laws. The crucial point is that laws (by which Hayek means private law) exist prior to the constitution, which '*presupposes* the existence of a system of rules of just conduct and merely provides a machinery for their regular enforcement'.[22] Whereas a constitution is created by a constituent power, laws in the Hayekian sense are not the work of legislators but are long-established rules arising from generally accepted conceptions of justice, which legislators merely recognize and ratify. On this reading, we are led to the paradoxical conclusion that laws are not made by lawmakers. In this context, the separation of powers does not denote that the legislature alone is authorized to elaborate laws; on the contrary, the legislature should not make laws at all, if we understand *law* to mean the rules of just conduct rather than the legislation produced by a legislature.[23] The ultimate implication of this argument is that *constitutional laws should not be part of the constitution*.

Unbridled institutional *constructivism*

It follows from this conception of the separation of powers that a 'three-tiered system of representative bodies is needed', with rigorously distinct responsibilities: namely (in order of precedence), the *constituent* entity, the *legislative* entity and the *governing* entity. The first is responsible for the 'semi-permanent framework of the constitution and need act only at long intervals when changes in that framework are considered necessary'. The second is concerned with the 'continuous task of gradual improvement of the general rules of just conduct'. Finally, the third is entrusted with the 'current conduct of government, that is, the administration of the resources entrusted to it'.[24]

As the constituent tier comes first in the hierarchy, this would be the only tier not constrained by rules emanating from the other two tiers. The legislative assembly would operate within the framework set by the constituent entity, the 'constitution-making or constitution-amending body'.[25] Meanwhile, the 'governmental assembly' and government itself (or cabinet) would be doubly bound: by the organizational rules set out in the constitution (first tier) and the laws upheld or passed by the legislative assembly (second tier). In such a system, 'governmental machinery . . . would have to operate within the framework of a law it could not alter'.[26] He contrasts this with contemporary states where the 'supreme governmental authority' is no longer a human being, like the monarchs of yore, but rather an assembly (or assemblies), resulting in a situation whereby 'the "political necessities" of contemporary democracy are far from all being demanded by the majority!'[27]

It is this singular separation of powers on the basis of responsibilities that will ensure 'government under the law', because the 'Governmental Assembly and its government as its executive organ . . . would be restricted both by the rules of the Constitution and by the rules of just conduct laid down or recognized by the Legislative Assembly'.[28] As indicated above, Hayek distinguishes between law or rules of conduct (*Recht*, *nomos*, *jus*) and 'legislation' (*Gesetz*, *thesis*, *lex*) – a distinction he borrowed from Schmitt, for whom the legislative efforts of a democratically elected government can only result in a *Rechtsstaat* degenerating into a *Gesetzesstaat*, the Weimar Republic being a sorry example of such a legislative state.[29] However, the boundary between the rules of just conduct and the organizational rules applicable to a government may not always be easy to draw: 'The problems would arise chiefly in the form of a conflict of competence between the two assemblies [legislative and governmental], generally through the questioning by one of the validity of the resolution passed by the other.' Hayek therefore proposes a third tier that he variously calls a 'special court', 'court of last instance' or 'separate Constitutional Court'.[30] This entity would be created by the constitution but would not have law-making powers. Composed of professional judges and former members of the legislative assembly, its decrees and rulings would be exclusively negative, in that it would not prescribe any specific course of action, nor authorize either assembly to adopt one. Rather, it would restrict

itself to decreeing that ‘nobody at all was entitled to take certain kinds of coercive measures’ to ensure that coercion is not used to further the interests of particular groups (as opposed to upholding the rules of just conduct).[31] In other words, it would effectively be able to veto such coercive measures.[32] Lacking the power to make laws, it is nevertheless the guarantor of the primacy of the rules of just conduct, its principal role in fact being to defend the legislative assembly against encroachments by the governmental assembly. In this sense, its power is negative rather than positive – one might describe it as ‘negatively sovereign’. Hayek suggests in passing, however, that ‘in the course of gradually building up a body of doctrine it should probably be bound by its own former decisions, while whatever reversal of such decisions might seem necessary had best been left to an amending procedure provided by the constitution’.[33] The problem is that the constitutional court would itself appear to possess the power to deem such amendments necessary – free from any oversight by the two assemblies, it would be in a position to overturn its own previous rulings. In this respect, its prerogatives would seem to extend beyond simply stating its legal opinion on the rules of just conduct, even though it still does not have the power to pass substantive laws.

’Emergency powers’ and state sovereignty

One might think that such a scheme is simply too idealistic to ever be implemented; and does it not betray a highly constructivist vision, wholly at odds with Hayek’s professed anti-constructivism? The political agenda behind this architecture only becomes clear by looking more closely at the ‘exceptions’ that he introduces to justify the overriding of his own stated principles. Though his three-tiered scheme seems at first sight designed to curtail state sovereignty or indeed eliminate it altogether, these exceptions reintroduce it through the back door. While contending that sovereignty has no place in a system of ‘limited government’ (in contradistinction to any form of ‘unlimited power’), Hayek admits the possibility of a scenario where ‘it temporally resides in the hands of the constitution-making or constitution-amending body’.[34] This body is the first tier of the edifice, the constituent entity, which is thus, by definition, superior to all the other entities invested with power. Clearly, we are not talking about a

‘sovereignty of the constitution’: remaining true to the teachings of Schmitt, Hayek believes that a constitution’s legitimacy derives solely from the fact that it is the product of a constituent entity.[35] The only sovereignty he recognizes is that of this constituent entity, and then only within the specific timeframe allotted to it.

This sovereignty cannot be vested in the government – there would seem to be no legitimate way for it to lay claim to constituent power in the way that the Chilean junta did in 1973. There would thus seem to be a fundamental contradiction between Hayek’s stance in Volume 3 of *Law, Legislation and Liberty*, which was published in 1979, and his entreaty to Thatcher in August of that same year to follow the Chilean ‘example’.[36] But a close reading of Hayek’s work suggests that this is an inconsistency in appearance only. At the beginning of this chapter, we noted a passing and highly elliptical reference to the possibility of derogating from the ‘basic clause’ in ‘certain clearly defined emergency situations’. What situations might Hayek have had in mind? The penultimate section of Chapter 17, entitled ‘Emergency powers’, which has not really received the attention it deserves, affords an edifying answer to this question. Hayek concedes that the ‘basic principle of a free society . . . may yet have to be temporarily suspended when the long-run preservation of that order is itself threatened’. At times, ‘there may temporarily arise circumstances when the preservation of the overall order becomes the overruling common purpose, and when in consequence the spontaneous order, on a local or national scale, must for a time be converted into an organization’.[37] It is worth dwelling on this remarkable assertion, as the distinction between ‘spontaneous order’ and ‘organization’ is a structuring principle of Hayek’s thinking: the former arises from human actions but is not the product of conscious design, whereas the latter is deliberate, constructed, planned and geared towards an external goal. The market, and the rules of just conduct that are part of it, is for Hayek an example of a spontaneous order, and public institutions – including governments – are forms of deliberate organization. What then does he mean when he talks of the need to convert the one into the other? He is saying that, in emergencies, a government would be granted the power to issue ‘specific commands to particular persons as in normal times nobody would have the power to issue’.[38] In normal times, it does not have the right to command individuals in such a way (which would go beyond the strict framework of the law), but in a crisis it would be empowered to

coerce them. Hayek is explicit on this point: ‘When an external enemy threatens, when rebellion or lawless violence has broken out, or a natural catastrophe requires quick action by whatever means can be secured, powers of compulsory organization, which normally *nobody* possesses, must be granted to *somebody*.’[39] This shift from nobody to somebody is worth highlighting, not least because it is easy enough to identify the somebody in question: the dictator who concentrates all the power in their own hands, including the power to have a new constitution drafted. The parallel with the situation in Chile in 1973 and the junta’s rhetoric is inescapable: the existential threat supposedly posed to the nation by the external enemy (communism) and its domestic allies (Popular Unity and the popular power organs) justified overthrowing the existing constitutional order and conferring on one man all decision-making powers. By way of various ponderous circumlocutions, this line of argument can be used to justify the authoritarian, hyper-presidential regime of Pinochet and the junta’s total expropriation of constituent power from the people.

At this point, the question of state sovereignty rears its ugly head again, Hayek having previously tried to sweep it under the carpet by referring to the ‘sovereignty of the law’. Acknowledging the danger inherent in granting ‘somebody’ such ‘dictatorial powers’, Hayek invokes Carl Schmitt: ‘It has been contended with some plausibility that whoever has the power to proclaim an emergency and on this ground to suspend any part of the constitution is the true sovereign.’ And he concedes: ‘This would seem to be true enough if any person or body were able to arrogate to itself such emergency powers by declaring a state of emergency.’[40] How then to avoid the abuse of these emergency powers? Hayek’s prescription is that the authority empowered to declare a crisis should be separate from the entity that exercises those emergency powers: specifically, it would be up to the legislative assembly to declare the state of emergency and to delegate to the government some of its powers, as well as conferring on it the exceptional powers that nobody holds under normal circumstances. But what if the legislative assembly of Hayek’s model is lacking and the existing Houses of Parliament have been dissolved? And what happens in a situation where the emergency powers include the right to suspend the *entire* constitution rather than merely part of it? Such a situation would dictate that constituent power be invested exclusively in the government and, more specifically, in its leader. Suppressed in the name of the sacrosanct ‘sovereignty of the law’,

the sovereignty of the state thus re-emerges by virtue of the emergency powers conferred on that leader, who now possesses a constituent power that knows no legal bounds. The Pinochet regime may not have functioned as a template for the neoliberals, in that their political experiments over the years have not been directly modelled on the Chilean experience. But neither is it incidental to the history of neoliberalism; on the contrary, it reveals to us that the constitutionalization of the market is dependent upon a certain *state authoritarianism*.

Constitutional decisionism and state dictatorship

It is in this respect that Hayek's philosophical legacy has proved to be the most telling, rather than in the details of his proposed constitutional model. This is hardly surprising, given that the guiding principle of his thinking is to give absolute primacy to the spontaneous order through which he believes the rules of just conduct are generated, independent of conscious human design. However, this kind of 'cultural evolution' would seem ill-suited to spawning constitutional arrangements, which, as Hayek himself acknowledges, necessarily require deliberate human agency.[41] In order to surmount this theoretical difficulty, a number of neoliberals who have otherwise been influenced by Hayek have invoked Schmitt's notion of decisionism, whose origins can be traced back to the pioneers of German ordoliberalism, Walter Eucken and Franz Böhm. They agreed with Schmitt's view that the economic constitution was a 'comprehensive decision concerning the nature and form of the political unit'.[42] In 1937, Böhm described it as 'a normative order of the national economy' that must come into being through the exercise of a 'conscious and aware political will, an authoritative decision of leadership'.[43]

Drawing on the work of Eucken and Böhm, the ordoliberals, who acted as advisors to the Nazi regime on the financing of the war effort, saw an economic constitution as key to the *Ordnungspolitik*.[44] This meant introducing order through a set of legal principles and rules that determined the scope of parliamentary action and the conduct of economic players, as well as preventing any form of discretionary interventionism in the economy. They would later transpose this conception of an economic constitution to the supranational European level. For example, in the 1950s,

the former Nazi Party member Müller-Armack, ‘probably the most influential German at Brussels’, led the German delegation in negotiations over the Treaty of Rome, which created the European Economic Community (EEC) in 1957.[45] Some years later in 1971, he would argue that the EEC is founded upon a market economy and ‘law over and above its constitutive political entities’.[46] He viewed such a community as a source of stability (a *Stabilitätgemeinschaft*), the governments and parliaments of member states being subject to a supranational legal framework that guaranteed individual economic rights as well as competition.

In this neoliberal interpretation of the Treaty of Rome, a special mention should go to Ernst-Joachim Mestmäcker, a student of Böhm at the University of Freiburg and a special advisor to the European Commission from 1960 to 1970. From the moment it was signed, it was clear that this treaty, far from being a direct expression of the neoliberal doctrine, was merely a general legal framework whose application would be dependent upon subsequent political developments. The treaty articles relating to competition (Articles 85 and 86) were provisional – broad statements of principle that did not ascribe a clear role to the Court of Justice of the European Communities (CJEC). Article 87 stated that regulations and directives for the application of these principles would be laid down within three years of the treaty coming into force. Ultimately, it was in 1962 that a much more strongly worded regulation granted the court ‘unlimited jurisdiction’ in matters of fines and penalties. As a special advisor, Mestmäcker saw European integration through the lens of ‘economic constitutionalism’ and embraced two theoretical principles: the court’s power to overrule national law, and the right of individuals to petition the court directly. In 1965, he wrote that the CJEC was a ‘new legal entity in International Law whose legal subjects are not only the Member States but also individuals’.[47] In legal jargon, this meant that the Treaty of Rome was ‘self-executing’ and ‘directly effective’ in the court. This granting of power in two directions – upward to the Community through the CJEC and downward to private individuals – was at the heart of the constitutionalist reading of the European project: Europe was a supranational legal order that instituted private rights which could be directly upheld by the CJEC. From the perspective of Mestmäcker in his synthesis of Hayek and Böhm: ‘The emphasis is not on the surveillance rights of the Commission but on the legal relationship that placed the citizen inside the twin nested sovereignties

of Europe and nation.' The vertical legal relationship established between the individual and the CJEC afforded a means of circumventing 'deviant exercises of national sovereignty' and securing the human right to trade.[48]

But neoliberal constitutionalism can also take other forms. Some staunch neoliberals who are barely interested in the finer points of ordoliberalism or in synthesizing Hayek and Böhm have openly called for a 'constitutional revolution'. Indeed, James Buchanan, the pioneering figure of constitutional economics (which proposes to evaluate institutions according to their capacity to satisfy economic interests), boldly declared that 'we are all constitutionalists' and presented Charles Beard as a precursor of this school of thought. In fact, the two approaches are diametrically opposed: whereas Beard is interested in elucidating the origins of the US Constitution, Buchanan is concerned with passing normative judgements on the institutional arrangements that are most conducive to good economic performance and has no qualms about advocating the abolition of political institutions that do not meet these criteria.[49] In *The Limits of Liberty*, for example, he argues that the challenge consists of 'curbing the appetites of majority coalitions', while the solution is to impose 'constitutional constraints' on 'majority rule': 'Democracy may become its own Leviathan unless constitutional limits are imposed and enforced.'[50] At the Mont Pelerin Society gathering in Viña del Mar in November 1981, in an address entitled 'Democracy Limited or Unlimited?', Buchanan warned his colleagues about being complacent after the recent victories of Thatcher and Reagan: 'We should not be lulled to sleep by temporary electoral victories of politicians and parties that share our ideological commitments . . . [and this must not] distract attention away from the more fundamental issue of imposing new rules for limiting government.'[51] In May 1980, after the Chilean regime had carried out a significant number of privatizations, Carlos Francisco Cáceres (whom we met in Chapter 2) and Finance Minister Sergio de Castro arranged a week-long visit by Buchanan, during which he gave five lectures to senior figures in the junta to assist them in drafting a new constitution. He recommended imposing 'severe restrictions on the power of government' and stressed that the country 'must have a constitution that requires a balanced budget'.[52] As he said in an interview given to *El Mercurio* during his stay: 'We are formulating constitutional ways in which we can limit government intervention in the economy and

make sure it keeps its hand out of the pockets of productive contributors.'[53] It is obvious enough from such remarks that neoliberals had no qualms about 'binding' democracy – and not just to save the market order when it was under threat, as Hayek claimed, but to constitutionalize that order, or indeed to *create* it through constitutionalization.[54] They may have advocated different paths, but they converged on the same goal: namely, to bring about the constitutionalization of the market by any available means, including state dictatorship.

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1 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, vol. 2, p. 61.

2 Ibid., vol. 3, p. 140.

3 Ibid., vol. 3, p. 33. For Hayek, the error lies 'in the belief that this ultimate source of power must be unlimited, that is, the *idea of sovereignty itself'* (our italics).

4 Ibid.

5 On Schmitt's critique of the confusion inherent in the notion of 'constitutional sovereignty', see Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer, Duke University Press, 2008.

6 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 4.

7 Ibid., Preface, xix.

8 Charles Beard, *An Economic Interpretation of the Constitution of the United States*, Dover Publications, 2004 (1913), p. 11.

9 Charles Beard's book has been the subject of a remarkable analysis: Violaine Delteil and Lauréline Fontaine, 'Sur l'empreinte économique de la Constitution américaine, lecture croisée de Charles Beard', in Lauréline Fontaine, *Capitalisme, libéralisme et constitutionnalisme*, Mare et Martin (Libre Droit), 2021, p. 87 (available in English at ledroitdelafontaine.fr).

10 Delteil and Fontaine, 'Sur l'empreinte économique de la Constitution américaine', p. 130.

11 Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism*, Harvard University Press, 2018, p. 116.

12 Delteil and Fontaine, 'Sur l'empreinte économique de la Constitution américaine', p. 126.

13 Hayek, *Law, Legislation and Liberty*, vol. 1, p. 1.

14 Ibid., vol. 3, p. 106.

15 Ibid., vol. 3, p. 108.

16 Quoted in 'Preventing the "Abuses" of Democracy: Hayek, the "Military Usurper" and Transitional Dictatorship in Chile?', *American Journal of Economics and Sociology*, vol. 71, no. 3, July 2012, p. 521.

17 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 109 (our italics).

18 Hayek specifically has in mind the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948. Ibid., vol. 3, pp. 103–6.

19 Ibid., vol. 1, p. 82. Hayek erroneously interprets the advent of the nomothetes as signalling the transition from the popular sovereignty of the fifth century BCE to the rule of law after 403, positing an opposition between the moderate and analytical nomothetes and an assembly at the mercy of the demagogues that was largely a product of his own intellectual biases. Vincent Azoulay and Paulin Ismard, *Athènes 403. Une histoire chorale*, Flammarion (Au fil de l'histoire), 2020, p. 333.

20 Ibid., vol. 3, p. 122 (our italics).

21 Ibid., vol. 3, p. 140.

22 Ibid., vol. 3, pp. 37–8 (our italics).

23 Throughout his oeuvre, Hayek insists that laws governing human conduct (for which his preferred term is ‘rules of (just) conduct’) are discovered rather than created. In this sense, law predates legislation.

24 Ibid., vol. 3, p. 38.

25 Ibid., vol. 3, p. 123.

26 Ibid., vol. 3, p. 120.

27 Ibid., vol. 3, p. 101.

28 Ibid., vol. 3, p. 123.

29 Slobodian (*Globalists*, p. 205) cites Hayek’s 1963 paper ‘Recht, Gesetz und Wirschaftsfreiheit’ (in *Freiburger Studien*, J. C. B. Mohr, 1969, p. 47). Schmitt notes in 1934 that, by failing to distinguish between law and legislation, political philosophers reduce the notion of the rule of law to that of a legislative state, leading some to reduce the law to a simple majority decision by parliament (Carl Schmitt, *On the Three Types of Juristic Thought*, trans. Joseph W. Bendersky, Praeger, 2005). However, as we will see in Chapter 12, Schmitt has a conception of law that encompasses a concrete order and a concrete community – a conception that was, of course, alien to Hayek.

30 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 121.

31 Ibid.

32 As we saw in Chapter 1, in the spirit of the ‘transplanting’ that took place in Chile under Pinochet, a constitutional court can veto a draft bill that has the support of both houses of parliament.

33 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 121.

34 Ibid., vol. 3, p. 123.

35 See Chapter 1.

36 Ibid.

37 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 37.

38 Ibid., vol. 3, p. 125.

39 Ibid., p. 124 (our italics).

40 Ibid., p. 125. Hayek is borrowing from Carl Schmitt, ‘Soziologie des Souveränitätsbegriffes und politische Theologie’, in Melchior Palyi, *Hauptprobleme der Soziologie. Erinnerungsgabe für Max Weber*, Duncker & Humblot, 1923, p. 5.

41 Ibid., p. 155–8.

42 Quoted in Slobodian, *Globalists*, p. 211.

43 Ibid. The quote is from Walter Eucken, Franz Böhm and Hans Grossmann-Doerth, *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtschöpferische Leistung*, W. Kohlhammer, 1937, p. xix.

44 Böhm was alone in protesting against anti-Jewish discrimination. See Werner Bonefeld, *The Strong State and the Free Economy*, Rowman & Littlefield, 2017, p. 11.

45 Ibid., p. 119.

46 Alfred Müller-Armack, *Auf dem Weg nach Europa. Erinnerungen und Ausblicke*, Wunderlich and Poeschel, 1971, cited in ibid., p. 119.

47 Ibid., p. 210.

48 Ibid.

49 Delteil and Fontaine, ‘Sur l’empreinte économique de la Constitution américaine’, p. 131.

50 James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*, University of Chicago Press, 1975, pp. 151, 105 and 161.

51 James M. Buchanan, ‘Democracy Limited or Unlimited?’, cited in Nancy MacLean, *Democracy in Chains: The Deep History of the Radical Right’s Stealth Plan for America*, Scribe, 2017, p. 174.

52 Ibid., p. 159.

53 James M. Buchanan, ‘Government Interventionism Is Simply Inefficient’, *El Mercurio*, 9 May 1980, cited in MacLean, *Democracy in Chains*, p. 158.

54 MacLean, *Democracy in Chains*, p. 159.

5

Neoliberalism and Its Enemies

Neoliberalism is a political strategy directed against enemies that are perfectly well-defined, namely socialism, trade unionism and the welfare state. In other words, anything that even vaguely resembles dirigisme or collectivism. One would be mistaken in thinking that the political stances of neoliberals, the advice they give to those in power, the writings they aim at the general public and the pamphlets they produce are the neutral expression of objective theoretical thinking. What sets them apart from more traditional neoclassical economists is that they are on a mission to save Western civilization from the threat hanging over it. In their hands, science becomes a means of legitimizing political support for the free market, and thus a weapon in the ideological struggle. And the initial objective of this supposedly scientific approach is to analyse the crisis and its causes. But it is not the warning of the collapse of capitalism, either from the Marxists or Schumpeter, that motivates them, but rather the erosion of the free economy on account of the spread of the socialist mindset, trade union dominance and the zeal for social reform. In this respect, the statement of objectives of the Mont Pelerin Society on 8 April 1947 speaks volumes: the aim of the intellectuals behind this new society was to defend ‘that most precious possession of Western Man, freedom of thought and expression’, but also ‘private property and the competitive market’, as well as the ‘desirability of the rule of law’ – ideals which taken together defined what they understood by a ‘free society’.[1] There is an unmistakable continuity between this programme and Hayek’s later denunciation of

socialism in *The Road to Serfdom* (1944), an essay in which he argues unabashedly that Nazism and fascism were a direct consequence of the socialist mentality.

This danger hanging over civilization calls for an ideological struggle, and the various currents of neoliberalism will never refrain from intervening on the political scene to counter any threat to a free economy. But to say that neoliberalism is opposed to socialism – indeed, that it is its most resolute adversary – does not quite capture the full picture. Not content with waging a purely ideological and cultural battle, neoliberals have sought to preclude any possibility of a socialist future through introducing laws and measures, and setting up institutions, that will block it. Their central goal from the outset has been to defeat socialism, along with undermining the unions and stripping back the welfare state.

Eradicating socialism by planning for competition

According to Ludwig von Mises: 'Our whole civilization rests on the fact that men have always succeeded in beating off the attack of the re-distributors.'[2] At the beginning of the 1920s, the theoretician initiated an ideological war against socialism and the threat it allegedly posed to Western civilization, which, in his view, was defined by capitalism and the right to private property: 'The attempt to reform the world socialistically might destroy civilization.'[3] As a radical enemy, socialism must be wiped out: 'If we wish to save the world from barbarism we have to conquer Socialism, but we cannot thrust it carelessly aside.'[4] By defining it in *Nation, State and Economy* in 1919 as the 'transfer of the means of production out of the private ownership of individuals into the ownership of society', Mises identified socialism with collectivism and claimed that the central planning of 'war socialism' would lead to total socialism.[5] While he was at it, he took aim at socialist centralism, Marxism and trade unionism. Mises did not content himself with this historical critique, however: in a 1920 article entitled 'Economic Calculation in the Socialist Commonwealth', he developed a theoretical argument which he believed definitively refuted socialism: 'To prove that economic calculation would be impossible in the socialist community is to prove also that Socialism is impracticable.'[6] In the context of Red Vienna, he took issue with the

Austromarxists, and particularly with Otto Bauer and Otto Neurath. The latter had elaborated a project for a planned economy that functioned without money, and Mises countered by arguing that calculation was impossible in a socialist economy founded on the collective ownership of the means of production.[7] In the absence of mechanisms of exchange between two private owners to establish the commensurability of goods in monetary terms, he claimed that economic calculation becomes impossible and socialist planning impracticable: 'Without calculation, economic activity is impossible. Since under Socialism economic calculation is impossible, under Socialism there can be no economic activity in our sense of the word.'[8] Mises concluded that socialism was fundamentally irrational and that, conversely, only market mechanisms could guarantee economic rationality in a modern society. In 1922, he published a 500-page work called *Socialism*, in which he attacked the socialist worldview from every conceivable angle. He argued that a socialist economy based on centrally planned production was both a theoretical and practical impossibility, contested the notion that societal evolution would necessarily lead to socialism, contended that the ethical case for socialism could not withstand rational scrutiny, and concluded that it was an agent of 'destructionism' that posed an existential threat to Western capitalist civilization:

> In fact Socialism is not in the least what it pretends to be. It is not the pioneer of a better and finer world, but the spoiler of what thousands of years of civilization have created. It does not build; it destroys. For destruction is the essence of it. It produces nothing, it only consumes what the social order based on private ownership in the means of production has created.[9]

Mises's *Socialism* 'turned an entire generation of young intellectuals away from Marxism and toward classical liberalism. Lionel Robbins, Friedrich Hayek, Wilhelm Röpke, Eric Voegelin, and many others later testified that *Gemeinwirtschaft* had had a decisive impact on them in their formative years.'[10]

At the request of Lionel Robbins, who had also attended Mises's seminar and wanted to introduce the ideas of the Austrian School into the debate in Britain, Hayek accepted a post at the London School of Economics in 1933. In 1935, he edited a collection of essays entitled *Collectivist Economic Planning*, in which Mises's seminal article on the impossibility of calculation in a socialist economy appeared. In his own contribution to the book, however, Hayek put forward new arguments, including the idea that

socialist planning involved the ‘abrogation of the sovereignty of the consumer’, a concept originally forged by William H. Hutt.[11] Whereas the Austrian School had highlighted the opposition between self-regulating economic cycles and government interventionism, Hayek placed the emphasis on the incompatibility between socialist planning and competition. He argued that socialist planners tend to ‘refer to competition when they are asked how they are going to solve a particular difficulty’, but since ‘nobody has yet demonstrated how planning and competition can be rationally combined’, they will be forced to choose one or the other – a subtle way of implying that competition will naturally and rationally win out.[12] Hayek’s tone was very different from that of Mises and his furious rant against anything that remotely resembled socialism or interventionism, but then the situation in the United Kingdom of 1935 was very different from that of early 1920s Vienna. In his inaugural lecture at the London School of Economics in 1933, Hayek remarked that in Britain ‘there are, of course, very few people left today who are not socialists’.[13] The debate was dominated by John Maynard Keynes, whose 1926 work *The End of Laissez-Faire* sought to consign government inaction to the past. But Hayek, in noting how competition was increasingly being integrated into the models of socialists planners, was inclined to see in this trend a new form of planning:

> If it could be realized in a pure form in which the direction of economic activity would be wholly left to competition, the planning would also be confined to the provision of a permanent framework within which concrete action would be left to individual initiative.[14]

A retort to Mises and Hayek came from the Polish economist Oskar Lange and those who later came to be known as market socialists. Accepting the principles of neoclassical economics, Lange argued that the social ownership of the means of production was *not* incompatible with market mechanisms and the setting of prices, with a central agency performing the economic calculation needed to plan the economy and achieve market equilibrium. Market socialism constituted a genuine challenge to the analysis of Mises, who had claimed that socialism’s destruction of market mechanisms meant it could never work. But the debate between Lange and Mises meanwhile afforded Hayek the opportunity to develop his ideas on the dispersed and evolving nature of knowledge. Since knowledge is

acquired by economic agents who are engaged in competition, he decided a central planning board that relies on centralizing information simply would not be able to achieve equilibrium as it could not update its knowledge in real time. Only individual economic agents can bring about an efficiently coordinated market.[15] Competition thus became the decisive endogenous driving factor that enables the market to satisfy the evolving demands of consumers, with no need for central economic planning (which would in any case have a detrimental impact). In other words, a new conception of the market was taking shape that was no longer merely about coordinating supply and demand to achieve equilibrium. It was a vision of a practical social order capable of accommodating the sovereignty of choice of millions of consumers through the active planning of competition. In the same vein, Röpke described 'consumer democracy' in 1937 as a 'continuing plebiscite in which each piece of currency represents a ballot and in which the consumers, via their demands, are constantly voting to decide what types and amounts of goods shall be produced'.[16]

With the publication in 1937 of *The Good Society*, Walter Lippmann elaborated a new argument against socialism at a time when fascism, Nazism and Soviet communism had risen to the fore: as a collectivist endeavour, he argued, socialism led necessarily to totalitarianism because 'there is nothing in the collectivist principle which marks any stopping place short of the totalitarian state'.[17] On this view, it followed that defending market mechanisms was a way of warding off totalitarianism. The novelty here, though, was that Lippmann did not conclude that a return to laissez-faire was required. Rather, this critique of socialism also implied a critique of laissez-faire since such an approach could put up no resistance to socialism's destruction of the free economy. In Lippmann's opinion, the state needed to intervene to protect the price formation mechanism. Hayek and Robbins had read the first few chapters of Lippmann's book, which appeared as articles in the *Atlantic Monthly* in 1936 and 1937, and they corresponded with Lippmann, who acknowledged that he had been strongly influenced by Mises and Hayek, and especially by the latter's edited volume *Collectivist Economic Planning*. In a 1937 letter to Lippmann, Hayek also recognized that the state would need to transform the existing legal framework if socialism was to be combatted effectively:

> I have always regarded it as the fatal error of classical liberalism that it interpreted the rule that the state should only provide a semi-permanent framework most conducive to the efficient working of private initiative as meaning that the existing legal framework must be regarded as unalterable.[18]

In *The Road to Serfdom*, Hayek would adopt Lippmann's perspective and place the purported similarity between socialism and fascism at the heart of his argument in favour of liberalism.[19] Addressing the book to 'the Socialists of all parties', he set out to explain why socialism leads to the 'opposite of liberty', arguing that 'the rise of fascism and Naziism was not a reaction against the socialist trends of the preceding period but a necessary outcome of those tendencies'.[20] Like Lippmann, Hayek stressed that being opposed to socialist central planning should not be confused with a 'dogmatic laissez faire attitude'. To combat socialism, it was necessary to update liberalism thoroughly by introducing competition as a 'principle of social organization', with the state playing a fundamental role in this process: 'The liberal argument is in favor of making the best possible use of the forces of competition as a means of co-ordinating human efforts, not an argument for leaving things just as they are.'[21] This use of competition as a 'principle of social organization' not only admits 'certain kinds of government action' but requires 'an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible' that can be continuously adjusted.[22] Creating 'conditions in which competition will be as effective as possible' constitutes 'a wide and unquestioned field for state activity' and should be the basis of considerable 'legislative activity'.[23] Hayek no longer considers planning and competition to be incompatible and regrets that the word 'planning' has been commandeered by his socialist adversaries, since it is 'a very good word meriting a better fate'. Indeed, he asserts that the new liberalism that will be capable of neutralising socialism will involve 'planning for competition'.[24]

The two fronts in the struggle

There has been a tendency among many other neoliberal thinkers alongside Lippmann and Hayek, from the very outset of the neoliberal project, to adopt a two-pronged attack, or a combat on 'two fronts' in Röpke's terminology. The most important component by far was the struggle against

socialism and collectivism in all its guises, but there was also a secondary combat against old, outdated and dangerous forms of liberalism, not least the nineteenth-century version of laissez-faire inspired by naturalist ideas. For Lippmann and Röpke, of course, these two combats are linked insofar as socialism drew inspiration from the errors of Manchester Liberalism. What Röpke called the 'third way' is a more precise formulation of the 'Liberalism Agenda' adopted at the end of the Lippmann Colloquium and was strongly influenced by Lippmann's *The Good Society*, a central part of the discussions at the international gathering in 1938.

Röpke himself gave the clearest definition of the concept: 'the elimination of the sterile alternative between laissez-faire and collectivism'.[25] And the theoretician had no illusions about the practical challenges of fighting a war on two fronts to implement his third way:

> It goes without saying that such a two-fronted battle requires mental and moral resources of an uncommon order, and that there are phases when resistance seems to flag on one front while all reserves are being rushed to the other. It is also inevitable that as long as this program is still in its growing stages, irritating confusion and misunderstandings will continue to arise and the novelty and singularity of these economic proposals will not be recognized.[26]

What is striking about this passage is the emphasis on the strategic dimension of this 'program', and indeed one could characterize certain internal divisions within neoliberalism as divergent viewpoints on how the old liberalism should be revised. For his part, Röpke was in favour of a complete overhaul, but many, including Mises, Israel Kirzner and Murray Rothbard, sought to rethink the anthropological foundations of laissez-faire liberalism and rejected the notion of a third way between liberalism and socialism.[27] There is nevertheless an overall strategic coherence, in that the neoliberalism that began to take shape as a new political form at the 1938 colloquium was not the same as the mix-and-match liberalism that became a reality in post-war West Germany and other European countries. On the contrary, this new current vehemently rejected social liberalism and liberal socialism alike, as they were seen as symptoms of the disease that had afflicted the old liberalism. It would thus be a mistake to place the many and diverse attempts to reconcile liberalism and socialism under the neoliberal flag simply because neoliberals might countenance certain types of state intervention.

What was in gestation, and would become the key objective of post-war neoliberalism, was an authentic liberalism, but stripped of the naturalist illusions – to do with a spontaneous order arising independently of a state or legal framework – that were prevalent in the nineteenth century. For some, this revamp of liberalism was about rediscovering its essence, which had been betrayed both by laissez-faire and by concessions to socialism and collectivism, such compromises being particularly associated with Otto von Bismarck. It makes no sense, therefore, to distinguish between 'moderate' German or Swiss ordoliberals and 'radical' Austrian-Americans, any more than it does to contrast 'utopian' thinkers with supposed 'realists'.[28] Röpke is very clear on this point:

> This vigorous rejection of collectivism shows at the same time that nothing is further from the thoughts of the representatives of our program than the idea of adopting a fundamentally hostile attitude towards liberalism as such. They simply do not cling to that particular form which liberalism assumed both in theory and practice in the course of the nineteenth century and which finally discredited it so hopelessly. They are solely concerned with liberalism in that more general and inviolable sense which has retained its vigor through the ages.[29]

Collectivism and *socialism* remain the central targets of neoliberalism, these labels denoting all forms of economic dirigisme (the ultimate expression of which is the planned economy of communism) that seek to prop up, control or replace a healthy economy based on the free setting of market prices, private ownership and initiative, and competition. But the lines of attack multiply. It is not only the impracticability of socialism that comes under attack but its tyrannical ambitions to control the economy – and, slowly but surely, society itself, by politicizing every walk of human life. After the war, Hayek came to see in socialism a fatal error in terms of freedom and the Western way of life, and indeed a threat to life itself: 'The dispute between the market order and socialism is no less than a matter of survival. To follow socialist morality would destroy much of present humankind and impoverish much of the rest.'[30]

Hayek proposes that the error arises from a 'constructivist rationalism' that underpins a belief in the power of reason to shape every aspect of social evolution, which in turn prompts a desire to intervene in 'natural, spontaneous, and self-ordering processes of adaptation' that have a logic and history of their own.[31] To seek to control and direct the economy is to suppose that one can apply moral or political criteria external to the

spontaneous market order in place of the morality that is inherent to this order. Socialism is considered presumptuous in believing that it can impose external rules on economic practices that are themselves the unintentional, unplanned result of continual experimentation by human groups. But this is to misunderstand the nature of the existing order:

> We stand in a great framework of institutions and traditions – economic, legal, and moral – into which we fit ourselves by obeying certain rules of conduct that we never made, and which we have never understood in the sense in which we understand how the things that we manufacture function.[32]

Combating socialism was to become *the* enduring leitmotiv of the neoliberals, and not least Hayek. In *Law, Legislation and Liberty* in 1979, he declares that the 'last battle against arbitrary power is still ahead of us – the fight against socialism and for the abolition of all coercive power to direct individual efforts and deliberately to distribute its results'.[33] Defining 'the heart of socialism' as the notion that 'it is legitimate for government to use force to effect a redistribution of material benefits', he identifies unbridled democracy as the source of this force and concludes: 'It is therefore necessary to restrain these powers in order to protect democracy against itself.'[34] Until such time as 'the traditional beliefs of socialism will be recognized as an illusion, it will be necessary to make provision against the ever-recurring infection with such illusions that is bound again and again to cause an inadvertent slide into socialism'.[35] It is for this reason that he begins to focus his attacks on the welfare state and the 'mirage of social justice', having argued in *The Constitution of Liberty* (1960): 'Socialism in the old definite sense is now dead in the Western world.'[36] Socialism has a thousand faces and is just as capable of concealing itself in the welfare state as in the trade union movement.

Taming the trade unions

Warding off any renaissance of socialism involved weakening and containing the trade unions – a potential harbinger of the socialist transformation of society. Mises was resolutely critical of the pernicious impact of unions on the market economy, where, in his view, the 'sovereignty of the consumer' should reign supreme. But the goal of the

unions was diametrically opposed to this: they wanted to impose a democracy of producers, with the apparent conflict between bosses and employees in truth coming down to a struggle between buyers and wage-earning producers. In other words, the unions were waging a battle *against* consumers. They were defending specific interests but understood nothing about the role of entrepreneurs, or the need to adapt constantly to economic and technological developments. Union members were short-termists, stuck in their ways and resistant to the change necessitated by new technologies.

> It is not unfair to call syndicalism the economic philosophy of shortsighted people, of those adamant conservatives who look askance upon any innovation and are so blinded by envy that they call down curses upon those who provide them with more, better, and cheaper products. They are like patients who grudge the doctor his success in curing them of a malady.[37]

It might be tempting to write off such sentiments as excessively vindictive, but we should not lose sight of the fact that the trade union question is a central concern of orthodox neoliberalism. Indeed, its leading thinkers have viewed trade unions as a major problem ever since the 1930s. And it was within the Mont Pelerin Society that the richest debates took place and where two divergent political directions became apparent. The first involved incorporating the trade union movement into what the Germans called the *social market economy*. The second was geared towards weakening the unions by depriving them of their means of coercion. The latter option was supported by the Chicago and Austrian schools of economics, including Mises, Hayek and their disciples. Its aim was to undermine the unions gradually by chipping away at their capacity and legitimate scope for action, ultimately constraining their bargaining power.[38] But the two positions share a common concern: the need to ensure that the state does not intervene, in the face of union pressure, to set wages.

In response to the post-war consensus on capital and labour, whereby unions everywhere (not just in Germany) took part in wage negotiations overseen by the state, the neoliberals of the Mont Pelerin Society sounded the alarm. At the group's first gathering in April 1947, Hayek gave a presentation entitled 'Free Enterprise and Competitive Order', in which he declared:

> If there is to be any hope of a return to a free economy, the question of how the powers of trade-unions can be appropriately delimited in law as well as in fact is one of the most

important of all the questions to which we must give our attention.[39]

In the 1950s, the Society became a forum for intense debates at which the various currents of neoliberalism were represented. The discussions were not merely theoretical – they were also about elaborating a joint stance on the union issues raised by Hayek, and specifically about agreeing on an approach that would break with the post-war consensus on capital and labour. Advocated by Hayek, this break with the status quo ultimately won out over other voices who, right up until the early 1960s, were arguing for unions to be included within the framework of an overall collective agreement on the market economy and free competition. For the ordoliberals, getting employees to sign up to such a deal would involve educating them in economic matters and even entrusting them with a role in company management. How could they ensure that such educational initiatives did not give employees ideas above their station (an urge to assume responsibility for business matters) and ultimately lead to the socialism the ordoliberals so dreaded? This was considered a real danger. The ordoliberals were careful to make a distinction between employee participation and the co-management (*Mitbestimmung*) of the company advocated by German social democrats. Instead, employees would contribute to smoothing relations with management at the level of the company and the branch, without any state interference. Ordoliberalism was in favour of unions being incorporated into the corporate structure to deal with labour relations and personal issues, but did not accept that they should have any role at all in investment decisions. Under no circumstances should they be allowed to interfere in the allocation of resources, which remained the prerogative of management and stakeholders.

Ordoliberal tolerance for unions went only so far: the main point of striking agreements between bosses and unions was to prevent the state from interfering in company affairs and wealth distribution. The German ordoliberals of the 1950s bequeathed to us various terms, including *social partner* (*Sozialpartner*), as well as the notion that unions constituted one of the pillars of the free society – a stable and stabilizing force in the existing order. Bargaining within companies and at branch level was seen as a means of promoting good industrial relations, instructing employees in economics, and integrating them into the capitalist order. This was the approach

adopted in Europe, which has been called ‘European social dialogue’ since the Treaty of Rome.

The cheerleaders for the other current within the Mont Pelerin Society were the Anglo-Austrians Friedrich Hayek and Fritz Machlup. In their view, union power constituted a monopoly that distorted the labour market and by taking the lead in collective bargaining unions were directly responsible for unemployment and the fall in productivity. By its very nature, union power acted to the detriment of consumer sovereignty and employment – raising wages in a branch above the level they would have reached had employees not been coerced into joining the union necessarily meant condemning to unemployment all those who could have been employed at a lower rate. It was also, of course, negative for consumers insofar as it limited their choice. As for involving the unions in the running of a company, this would make no business sense at all: ‘A plant or industry cannot be conducted in the interest of some permanent distinct body of workers if it is at the same time to serve the interests of the consumers.’[40]

These thinkers did not share the ordoliberal faith in the educational value of such an initiative – namely, that it would instil greater rationality in the unions. On the contrary, they believed that the unions would constantly demand more as they watched employers and the state retreat. The only viable policy to adopt was therefore to limit their power, which was founded on their monopolistic control over the labour supply. To achieve this, public aid for unions and closed-shop arrangements had to be banned, the size of unions reduced and their sphere of influence constrained to their place of work (where they would be kept away from business and financial matters). The aim here was evidently to preclude any arrangement or alliance between different company and branch unions, solidarity strikes or more widespread industrial action.

This stance resonated with the most hardline faction of American business leaders, who already in the 1940s were seeking to oppose the New Deal and combat those who, both in government and the business world, were seen as making concessions to the unions.[41] This current grew stronger in the 1950s, which witnessed a marked anti-union backlash among business leaders and certain thinkers against the backdrop of the McCarthy witch-hunts. The argument, which has proved to have a long shelf life, was that industrial action was a kind of legally sanctioned violence against the freedom of consumers, company bosses and other

employees.[42] Hayek developed this idea at length, with the same anti-union recommendations, in *The Constitution of Liberty* in 1960, and his perspective was adopted by Margaret Thatcher when she came to power.[43] His conclusion was categorical: 'There is only one such principle that can preserve a free society: namely, the strict prevention of all coercion except in the enforcement of general abstract rules equally applicable to all.'[44] The implication here is clear enough: the only permissible form of coercion would be that used against unions when they are seen to be defending privileges.[45]

Against the welfare state

The neoliberal strategy has consisted of establishing an institutional order capable of resisting the development of social policy. This would seem to entail curtailing the power of employee organizations and restricting to a minimum any state monopoly in the domain of social security. As we saw earlier, neoliberalism is a response to the collectivist menace, which many neoliberal thinkers believe has a long history, dating it to the first attempts at social reform at the end of the nineteenth century. Indeed, neoliberalism can only be properly understood within the framework of this major transformation in capitalist societies whereby social security nets and wealth redistribution mechanisms were put into place to address, albeit modestly, the glaring inequalities and attendant poverty that the Industrial Revolution had given rise to. From the moment they first appeared on the political scene, the neoliberals were not in the business of warning against a distant threat or a foreign system – they were engaged in a relentless battle against anything that might extend socialism's grip on society. After all, were not the most dangerous socialists those who sought incrementally to acclimatize us to such changes, ultimately all the better to impose socialism lock, stock and barrel? The progressive institutionalizing of social security safeguards, and their popularity with the public, did nothing to soften the neoliberal stance, which essentially remained unchanged. Hayek, for example, who was by no means the most radical in this respect, displayed a remarkable consistency in his thinking between *The Road to Serfdom* in 1944 and *The Constitution of Liberty* in 1960. In the first work, he conceded that a prosperous society could and should provide a basic safety net for all

its members, and he saw no contradiction between a ‘system of social insurance’ that protected people against ‘common hazards of life’ and ‘the competitive system’.[46] This security should not, however, extend to guaranteeing a regular income for everyone, since this would sound the death knell for the market economy and individual freedom. But this is precisely the problem that arises in an era when ‘the value attached to the privilege of security constantly increases, the demand for it becomes more and more urgent, until in the end no price, not even that of liberty, appears too high’.[47] This despite the fact that such liberty, particularly when choosing jobs on the basis of the differences in remuneration, is a better guarantee of the security of all – attempting to guarantee the income of one particular group creates economic insecurity for everyone else, as well as depriving them of their freedom. This argument, which pits putative insiders against outsiders, is still employed today: is it not because of the protected salaries and status of certain groups that others find themselves unemployed and in precarious circumstances? In *The Constitution of Liberty*, this line of thinking is much more fully developed and shifts somewhat in focus. Noting that the revolutionary objective of expropriating capitalists had been abandoned by the leaders of the main socialist parties, Hayek asserts that they have adopted a less ambitious but no less dangerous goal in its place – namely, to advance further down the path of income redistribution and ultimately even out income inequalities. Social insurance was not initially redistributive in intent, its sole purpose being to guarantee an income for the poorest and most unfortunate. But this protection had gradually been hijacked and had become a covert tool for implementing a socialist-inspired policy of egalitarianism:

> It is as a means of socializing income, of creating a sort of household state which allocates benefits in money or in kind to those who are thought to be most deserving, that the welfare state has for many become the substitute for old-fashioned socialism. Seen as an alternative to the now discredited method of directly steering production, the technique of the welfare state, which attempts to bring about a ‘just distribution’ by handing out income in such proportions and forms as it sees fit, is indeed merely a new method of pursuing the old aims of socialism.[48]

This approach takes social security bodies, which have become state monopolies, to be ‘coercive and essentially arbitrary methods’ of picking the pockets of the rich and redistributing the funds to people who do not necessarily need the money and have done nothing to deserve it, but who

consider it to be their legitimate 'right'.[49] Hayek does not contest the state's role in providing services that cannot be provided by the market, but he does challenge the state's provision of such services as a pretext for coercing people and appropriating excessive powers for itself:

> If people thus can no longer exercise any choice in some of the most important matters of their lives, such as health, employment, housing, and provision for old age, but must accept the decisions made for them by appointed authority on the basis of its evaluation of their need; if certain services become the exclusive domain of the state, and whole professions – be it medicine, education, or insurance – come to exist only as unitary bureaucratic hierarchies, it will no longer be competitive experimentation but solely the decisions of authority that will determine what men shall get.[50]

In short, everyone becomes increasingly dependent on the charity of the welfare state, not least pensioners who have been dissuaded from private pension schemes by compulsory social security contributions and inflation. When 'state medicine' is called upon to care for one and all, including those at the end of their lives who can no longer contribute to other people's well-being, the standard of care will inevitably decline while, at the same time, becoming more expensive.[51] In Hayek's view, the repercussions of introducing such measures would be much more serious than people imagined: though they might reduce poverty in the short term, over the long term they must inevitably paralyse the economy and prevent social progress. He made this prediction in 1960, and despite it having proved wide of the mark, it remains a persistent leitmotiv of neoliberalism today. When they did attain power, politicians influenced by the neoliberal critique of the welfare state may not have managed to dismantle social security completely (and indeed Hayek himself warned of the difficulty of doing so). But they have engaged in a protracted struggle to undermine welfare mechanisms, whether by cutting their funding as much as possible or by reducing and rationing the range of services offered to beneficiaries. In the process, they have instilled in people the idea that they can no longer count on social security for their health needs or their retirement. This negative perception has helped to promote the acceptance of a strictly individual approach to social protection, and it is one of the great victories of neoliberalism. It creates the subjective conditions for dismantling the welfare state and replacing it with 'systems of true insurance under which the individuals pay for benefits offered by competing institutions'.[52]

This is, ultimately, an attack on what the neoliberals see as the root of the evil afflicting the West, which Hayek characterizes as the 'mirage of social justice'.[53] It is this final superstition that is used to justify the redistribution of wealth, progressive taxation and egalitarianism in all its forms. The neoliberal response is to propose a modern conception of inequality that is socially acceptable – one that is not based on pseudo-biological racism or nativism but is simply the product of free competition, from which conscious design is absent. Resources are distributed solely according to the anonymous and impersonal mechanisms of the market, which is itself no more than the unplanned outcome of millions of interactions between individuals who exploit the information at their disposal with varying degrees of success. One is entitled to ask, however, who possesses the requisite information, which is to say economically useful knowledge. It turns out that such information is far from being equally distributed among people from all walks of life; instead, it is concentrated among the classes who are already the most affluent. Max Weber and Albert Hirschman point out that the capitalist project required an argument to justify a situation that the working class would be inclined to find morally reprehensible. This has been a perennial problem for capitalism: such a fatalistic conception of inequality will always seem like a tenuous justification to the losers in this system of wealth accumulation. Instead of insisting on the blind forces of the market, defenders of the system have had to find alternative means of getting the general public to sign up to the competitive order.

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1 Mont Pelerin Society, 'Statement of Aims', 8 April 1947 (montpelerin.org).

2 Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane, Liberty Fund, 1981 (1922), p. 40.

3 Ibid., p. 118. See also Chapter 3 of this book.

4 Mises, *Socialism*, p. 52.

5 Ludwig von Mises, *Nation, State and Economy: Contributions to the Politics and History of Our Time*, trans. Leland B. Yeager, New York University Press, 1983 (1919), p. 172.

6 Mises, *Socialism*, p. 117.

7 Otto Neurath and Wolfgang Schuhmann, *Können wir heute sozialisieren? Eine Darstellung der sozialistischen Lebensordnung und ihres Werdens*, Kinkhardt, 1919.

8 Mises, *Socialism*, p. 103.

9 Ibid., p. 414.

10 See Jörg Guido Hüllsmann, *Mises: The Last Knight of Liberalism*, Mises Institute, 2007, p. 406.

11 Friedrich Hayek, 'The Present State of the Debate', in Friedrich Hayek, ed., *Collectivist Economic Planning: Critical Studies of the Possibilities of Socialism*, Routledge, 1963 (1935), p. 214. On Hutt's notion of the sovereignty of the consumer, see Niklas Olsen, *The Sovereign*

Consumer: A New Intellectual History of Neoliberalism, Palgrave Macmillan, 2019, pp. 52–8. Hayek knew Hutt through the London School of Economics.

12 Hayek, 'The Present State of the Debate', p. 241.

13 Hayek, 'The Trend of Economic Thinking', *Economica*, no. 40, May 1933, p. 135.

14 Friedrich Hayek, 'The Present State of the Debate', pp. 218–19.

15 Hayek, 'The Use of Knowledge in Society', *American Economic Review*, vol. 35, no. 4, September 1945, pp. 519–30.

16 Wilhelm Röpke, *Economics of the Free Society*, trans. Patrick M. Boarman, Henry Regnery Co., 1963 (1937), p. 197.

17 Walter Lippmann, *The Good Society*, Transaction Publishers, 2005, p. 52.

18 Friedrich Hayek, 'Yale University Archives, Walter Lippman Papers, Selected Correspondence, 1931–1974–77, Box 10, Folder 11: Hayek', quoted in Ola Innset, *Reinventing Liberalism: The Politics, Philosophy and Economics of Early Neoliberalism (1920–1947)*, Springer, 2020, p. 51.

19 Friedrich Hayek, *The Road to Serfdom*, Phoenix Books (University of Chicago Press), 1957 (1944).

20 Ibid., pp. 27, 3–4.

21 Ibid., p. 36.

22 Ibid., pp. 37, 38.

23 Ibid., p. 39.

24 Ibid., p. 42.

25 Wilhelm Röpke, *The Social Crisis of Our Time*, trans. Annette and Peter Schiffer Jacobsohn, University of Chicago Press, 1950 (1942), p. 23.

26 Ibid., pp. 22–3.

27 On this subject, see Pierre Dardot and Christian Laval, *The New Way of the World: On Neo-Liberal Society*, trans. Gregory Elliott, Verso, 2010. For a survey of the various positions, see Ludwig von Mises, *Human Action: A Treatise on Economics*, Mises Institute, 1998 (1949), p. 183.

28 This is the trap that Serge Audier falls into, having failed to appreciate the *strategic coherence* of neoliberalism, above and beyond theoretical differences of opinion.

29 Röpke, *The Social Crisis of Our Time*, p. 22.

30 Friedrich Hayek, *The Fatal Conceit: The Errors of Socialism*, University of Chicago Press, 1988, p. 7.

31 Ibid., p. 73.

32 Ibid., p. 23.

33 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, vol. 3, p. 152.

34 Ibid., p. 150.

35 Ibid.

36 Friedrich Hayek, *The Constitution of Liberty*, University of Chicago Press, 1960, p. 254.

37 Mises, *Human Action*, p. 810.

38 See Yves Steiner, 'The Neoliberals Confront the Trade Unions', in Philip Mirowski and Dieter Plehwe, *The Road from Mont Pèlerin: The Making of the Neoliberal Thought Collective*, Harvard University Press, 2009, pp. 81–203.

39 Hayek, cited in Richard Cockett, *Thinking the Unthinkable: Think-Tanks and the Economic Counter-Revolution, 1931–1983*, HarperCollins, 1994, p. 114.

40 Hayek, *The Constitution of Liberty*, p. 277.

41 Historians have extensively documented the ties between the Mont Pelerin Society and big business. Leading Texan oil companies that have financed the society have also funded anti-communist and anti-union propaganda organizations such as the Foundation for Economic Education (FEE).

42 The American neoliberal professor of law Sylvester Petro wrote extensively about coercion, and how it is in effect treated as lawful, in *The Labor Policy of the Free Society* (Ronald Press, 1957). In his view, while the right to free association is fundamental in a free society, it should not be allowed to undermine contract law and private ownership, as is the case with the coercive and monopolistic practices of unions in the US. Properly understood, the role of a union should be to help a company succeed in the market and to increase the productivity of employees – the only way of promoting their well-being. The function of labour policy should be to ensure that negotiations between employer and employees can take place unhindered by violent union actions.

43 On this subject, see Chapter 1, pp. 17ff.

44 Hayek, *The Constitution of Liberty*, pp. 284.

45 On the political implementation of the neoliberal war on the unions, see Chapter 9, pp. 168ff.

46 See Hayek, *The Road to Serfdom*, pp. 120ff.

47 Ibid., p. 235.

48 Hayek, *The Constitution of Liberty*, p. 289.

49 Ibid., p. 260.

50 Ibid., p. 261.

51 Ibid., pp. 297–300.

52 Ibid., p. 303.

53 This is the title of the second volume of Hayek's *Law, Legislation and Liberty*.

6

Neoliberal Strategies for Social Evolution

One clear lesson we have learnt in recent decades is that neoliberalism is not constrained to a particular political path for its implementation. Both the left and the right have espoused its basic tenets, differing mainly in the values they tout and the extent of their nationalist rhetoric. These cultural divergences from a set of core shared beliefs are nothing new. Already back in the 1930s, there was the modernizing camp that favoured adaptation and the conservative camp that was determined to counteract these trends. How is such political ubiquity possible? To better understand this multifaceted relationship with modernity and tradition, we need to look again at the underlying doctrines.

Simplifying somewhat (there is an almost inexhaustible range of nuances and combinations), it is possible to identify three main strategic approaches adopted in the neoliberal literature, each of which can be associated with a pre-eminent author. There is the modernizing strategy that involves adapting to the changes brought about by competition at the global and national levels (Lippmann); an unabashed conservatism that seeks to preserve organic and hierarchical communities (Röpke); and an evolutionary outlook that reconciles tradition and change within the gradual processes of social experimentation (Hayek). These strategic options can admittedly be reconciled with one another in practice, but they nevertheless confer on the political parties and ideological movements that adopt them very distinct identities, between which today's voters are supposed to choose and to identify with. What does not vary is the anti-collectivist

bedrock and the championing of competition-based capitalism. But the ideological channels through which such positions are advocated and implemented can vary. The upshot is that neoliberals can find themselves on seemingly opposite sides of the political playing field as it exists today, while still agreeing by and large on the pro-business economic policy that needs to be adhered to: Democrats versus Republicans in the US, Labour versus Tories in the UK, and left versus right in France. The realization that these apparent rivals are, in fact, two sides of the same coin has led to a wholesale rejection of the political class by some, as well as to the emergence of strange amalgams, including the broad German-style coalitions and Emmanuel Macron's middle-way administration.

As Wendy Brown rightly emphasizes in *In the Ruins of Neoliberalism*, the merger of neoliberalism and neoconservatism to be observed in Trumpism can be seen as two distinct ideological camps opportunistically exploiting each other.[1] But this should not allow us to lose sight of the *elective affinities* that neoliberalism has, from the outset, felt with certain strands of conservative thought. Instead of focusing on the apparent contradiction of an alliance between neoliberalism (initially progressive and open-minded) and neoconservatism (hostile to any social transformation), it is more fruitful to reflect on the place that conservative values – tradition, family and religion – occupy in neoliberal thinking. This demonstrates that such an alliance is not really unnatural or artificial after all. Rather, it reflects an affinity that arises from the nature of neoliberalism itself, some of whose advocates from a very early stage accorded a decisive importance to the traditional family structure and the hierarchical values that it embodies and passes on.

Lippmann and modernization

Barbara Stiegler considers the views of the American journalist and political commentator Walter Lippmann – who in 1937 published *The Good Society*, a major work in the history of neoliberalism – to be the cradle of this ideology. Whereas the ultra-liberal heirs of Herbert Spencer championed laissez-faire, believing that economic and social change went hand in hand and would spontaneously mesh with each other in the

‘struggle for survival’, Lippmann believed that the Industrial Revolution had, for the first time in human history, created

> a completely unprecedented situation of non-adaptation, which explains all the social and political pathologies of our age, exacerbated by *laissez-faire*. Political action should therefore be reconceived as an artificial, continuous and invasive surgical-like intervention on the human race itself with a view to re-adapting it to the demands of its environment.[2]

Lippmann’s evolutionary approach does not therefore involve surrendering to the spontaneous processes of untrammelled competition, but rather engaging in legal and political interventionism of a new type. Requiring special expertise, this interventionism aims to modernize institutions as well as mentalities to adapt them to the new economic and technological realities ushered in by the Industrial Revolution – a brutal historical turning point that brought with it the division of labour at both the national and international level. The most pressing issue, since it will affect the outcome of the crisis afflicting Western society, is how to adapt individuals to a radically new environment that extends beyond the city and even the nation to the entire world. Lippmann sees the Industrial Revolution as the most revolutionary event ever, because it has imposed a completely different way of life on humanity. Everything that used to provide a familiar framework for local community life, regulated by institutions, customs and ancestral beliefs, appeared to have been irremediably uprooted. The upheavals of the eighteenth century, with the remarkable increase in productivity engendered by the division of labour and the use of machines, destroyed the economic foundations of the relatively autarkic lives that the vast majority of people had been living until then. Lippmann insists on this point: the true revolution has already begun and it is a total, constant revolution that is speeding up. The crisis is of a social, not an economic, nature and arises from the disjuncture between the new, highly productive, globalized economy and the lifestyles and mentalities associated with the old modes of production. People had created a mental universe that was perfectly adapted to the relatively closed local communities in which they had lived for millennia. But all this baggage was useless, and harmful even, when it came to adapting to the new global reality. Lippmann believed it would be futile to attempt to curb this trend, let alone to reverse it. There could be no return to artisanal production or small-scale farming. No other path was conceivable, since any cultural lag would be sanctioned by the market.

Nations that resisted this transformation would be invaded and subjugated by stronger rivals, just as individuals who lagged behind would be the major casualties of a process that was forever accelerating. This cultural lag was a consequence of mentalities and habits of thought changing much more slowly than technology and modes of production. When faced with something new, people react according to the old ways of thinking, seeking for example to recreate a closed community (an impulse that has fostered various forms of collectivism). How then to deal with a largely maladapted population and help humanity to adapt to the new environment? Lippmann saw this as the major political issue confronting governments of the modern age. A very wide range of public and legal interventions would be necessary to reform society and alter mentalities fundamentally, producing a new social order that was in keeping with the new realities. These adaptive measures would need to be elaborated and implemented by experts, as the masses themselves lacked the requisite intellectual capacities.

For those interested in neoliberal strategies, rereading Lippmann today elicits a strange sense of déjà vu. Present already, in an extensively developed form, is the call for structures to be modernized, and above all for mentalities to adapt to the new economic realities. There now exists an immense and varied body of political and government literature, stretching from the post-war period to the present day and extending into every domain, that is full of exhortations to stop hanging back, to surmount obstacles and to overcome resistance. Indeed, in recent decades, the dynamic right and the modern left have both devoted themselves to dealing with such resistance, the perceived enemy being the stagnation of society and the inertia that hinders growth and progress. Such rallying cries have only intensified with the globalization of capitalism and the pressure to compete that it engenders. In this light, neoliberalism can be seen as a steamroller, flattening all opposition to a globalized economy that is structured by the principle of competition. Stiegler is therefore quite right to insist on the central importance of Lippmann when it comes to this strategic injunction to adapt, though we should be wary of associating neoliberalism exclusively with this modernizing impulse. For when we consider the dominant tone of ‘laboratories’ such as the Mont Pelerin Society or look more closely at the policy positions of the major right-wing (and indeed left-wing) parties, one cannot help being struck by the prominence of a very different and, in some respects, opposing strategic stance. This consists not

of helping people adapt to the realities of the Industrial Revolution but, on the contrary, of standing up for the most traditional values, defending local communities (even to the point of restoring them if necessary) and championing family and artisanal modes of production.

Röpke's ultra-conservative sociology

It may seem strange to characterize neoliberalism, as Pierre Bourdieu does, as a '*conservative* revolution' when one considers how little the neoliberal movement of the 1970s seems to have in common with revolutions that tend to attract that adjective, such as Weimar Germany and its Germanic peoples' ancestor cult.[3] While we should avoid conflating proponents of a *Blut und Boden* (blood and soil) ideology with the German neoliberals (the latter being vehemently opposed to economic nationalism), neither should we reduce neoliberalism to a programme of social and economic modernization *à la* Lippmann. Some authors who are just as prominent as him in the neoliberal firmament have been ardent champions of a *backward-looking utopia*.

The programme to restore traditional values is a prominent element of Wilhelm Röpke's ordoliberalism, for example. In his view, we are living through a spiritual and religious crisis that can only be resolved if economic policies are accompanied by a social policy (*Gesellschaftspolitik*), by which he meant a social-integration policy. This is indispensable since the present crisis is fundamentally 'sociological'.[4] His writings are therefore characterized by a constant focus on reversing social disintegration through the rehabilitation of 'natural' communities (meaning those centred around the family, neighbourhood and village) that provide people with a stable moral framework.[5] Indeed, as he stresses in a 1958 work, the roots of these communities lie much deeper in traditional Christian values, which absolutely must be preserved.[6] In the 1930s, there were many other authors outside the neoliberal sphere who shared Röpke's anti-modern outlook. His writings of the 1940s, particularly *The Social Crisis of Our Time* and *Civitas humana*, provided many defenders of authoritarian order with new reference points and ideological succour after the discrediting of Nazism and like-minded regimes. Having himself opposed the Nazis, Röpke was ideally placed to propose a synthesis of liberalism and the strong state,

which he wrapped in powerfully conservative rhetoric. Along with Hayek, he embodied the intellectual resistance to the left-wing ideas that were riding high in the immediate post-war years. As a conservative thinker, he was, in fact, often more radical than Hayek, expressing unwavering support for the apartheid regime in South Africa, for example.[7]

For Röpke, Western civilization was in 'total crisis' following the physical and psychological transformations it had undergone since the eighteenth century and a twofold revolution: the economic revolution of capitalism; and the political revolution of democracy. The third path that he advocated was designed to reverse the process of social disintegration and the falling moral standards among the populace, which were the symptoms of a 'sick society' and a 'spiritual and moral vacuum which was brought about by the dissolution and disintegration of all traditional values and norms, by the drain of one whole century on the cultural reserves'.[8] This is a relatively familiar anti-modern refrain, but where Röpke's originality lies is in the close connection that he draws between the competitive market and traditional values. In his view, social policy should at once steadfastly protect the market economy (which fosters an individual 'sense of responsibility') and promote a social and moral framework within which people will rediscover their sense of restraint, hard work, honesty, altruism and community, as well as their respect for authority.[9] The village and its stimulating environment of family, neighbours, parish and various trades, ideally modelled on a farming and artisanal way of life, is the vision he proposes in place of a swelling proletariat dwelling in giant cities amid the machines. He sees Switzerland as the ideal example of a country that has so far resisted succumbing to the general crisis. We are a long way here from Lippmann's version of neoliberalism, wherein society needs to adapt to modern capitalism and global competition. Röpke believes, by contrast, in a *counteractive strategy* that involves reintegrating people into organic communities, this being the only effective bulwark against collectivism.

What he is ultimately calling for is a 'spiritual renaissance', by which he means a return to the Christianity that was once the bedrock of civilization.[10] It is the sociological 'degeneration' that needs to be combated, since it is at the root of society's ills. This degeneration is a consequence of *Vermassung*, or a tendency 'towards amorphous mass formations' and 'mass instincts' – a notion he borrows from Ortega y Gasset – and it can only be overcome by restoring hierarchical structures

within which ‘each individual has the good fortune of knowing his position’. He contrasts membership of authentic communities of this kind, where people revere the legitimate authority, with a society where people are ‘packed tightly like termites’ into a ‘sand-heap’, living on top of each other and yet isolated – ‘a pseudo-integration which reaches its climax in the collectivist state’.[11] Of paramount concern for Röpke is ‘the disintegration of the family, a concomitant of the general pathological development and particularly striking proof of how deeply it is affecting the basis of a healthy human existence and of a well-integrated society’. For the family, ‘which is the natural sphere of the woman, the proper environment for raising children and indeed the parent cell of the community . . . has been degraded to a mere consumers’ co-operative’ and has become especially unstable amid ‘the decline of the village in favor of the city’.[12] These are just a few examples of what is a very long list of conservative grievances voiced by Röpke.

This strategic option for warding off the collectivist menace aspires to both a strong state *and* organic local structures to which the individual can relate. The two go hand in hand. From this perspective, there is no contradiction between a competitive economy and an organic community – on the contrary, only a combination of the two can ensure a healthy society with a healthy economy. Such is Röpke’s backward-looking, not to say archaic, utopia:

> It is probable that men will fatalistically allow themselves to be carried by the current of collectivism as long as they see no other positive goal, firm and tangible, before them; in other words, as long as they know of no counter-program to collectivism over which they can really wax enthusiastic.[13]

The considerable disparities between Lippmann’s modernizing and adaptive option and Röpke’s conservative alternative are nowhere clearer than in their divergent conceptions of the division of labour. For the latter, this division has been taken too far and, in shattering traditional lifestyles and ways of working, has given rise to pressure groups, unions, cartels and professional associations, which in turn have shackled the state to vested interests and distorted competition, to the point of destroying a healthy ‘consumer democracy’. The solution is not, as Lippmann would have it, to adapt to an industrial society and the new division of labour but to ‘promote and strengthen all forms of living and working which have not yet

succumbed to collectivization and proletarization'.[14] Capitalism's future is endangered by monopolies that wreck competition, eliminate small businesses and erode the village environment and rural way of life. This conservatism, then, is by no means anti-capitalist – on the contrary, it is through preserving and revitalizing organic communities and defending small businesses that the 'anti-capitalist mass rebellion' can be warded off.[15] Röpke does criticize the degeneration of capitalism, which having failed to shake off the feudal heritage of big landowners and associated privileges has resulted in industrialization on a huge scale, the concentration of wealth and revenues, and proletarianization. Yet he considers this type of capitalism, dominated by large organizations, to be no more than an unfortunate offshoot of the competitive market economy.[16] His criticism of capitalism in its current state is merely the flipside of his conservative ideal: a capitalism centred around small independent businesses.[17] The virtue of a small business is that it ensures individual self-sufficiency while, at the same time, promoting a sense of personal responsibility, the role model being a small family farming concern. The 'de-proletarianizing' that he hopes for is by no means contrary to the spirit of enterprise; rather, it would involve the widespread embrace of the 'forms of living and working' associated with independent small businesses. Röpke was selling the illusion of a popular capitalism that took better account of individual merit and in which every member of the proletariat would own their own house, a plot of land and some company shares – in short, everyone would be a 'small capitalist'.[18] This same vision of everyone becoming a property owner would later be adopted by Valéry Giscard d'Estaing and, above all, by Thatcher. But the ultimate point of these sociological measures was to strengthen the competitive market, and they should not be confused with social security initiatives. All measures taken 'must always be in harmony with, and converge towards the main goal of economic reform'; at the centre of it all will be a 'free market and genuine competition, in which, under fair and equal conditions, the success of the private enterprise will be measured in terms of its service to the consumers'.[19] In other words, however varied and sometimes surprising these modes of public intervention may be, their legitimacy derives solely from their promotion of the principle of competition. For Röpke, far from being irreconcilable, the market and conservative values are equally indispensable in a free society –

a viewpoint that illuminates the ideological shift of conservative parties after the Second World War, when they presented themselves simultaneously as the defenders of religion and strict moral codes *and* as the champions of free enterprise and the market. They were able to turn a blind eye to the social and moral repercussions of capitalism through an intellectual sleight of hand, promoting an idealized version of a pure market economy that was distinct from the capitalist system that had evolved historically. This proved to be a very fruitful move politically, including in relation to the working classes: the potential for 'anti-capitalist mass rebellion' was neutralized by winning over sometimes substantial numbers of working-class voters through an emphasis on traditional patriarchal values and institutions, respect for authority and moral conformity.

Hayek's evolutionism and conservatism

In a well-known text entitled 'Why I Am Not a Conservative', Hayek is at pains to distinguish between liberalism and conservatism.[20] What differentiates 'the defenders of liberty and the true conservatives' is first and foremost their attitude to change, conservatives conferring on the past an intrinsic value and being resistant to 'drastic change', whereas liberalism 'has never been a backward-looking doctrine' and instead 'wants to go elsewhere, not to stand still'.[21] But why, then, does a 'liberal' like Hayek, who insists he is *not* a conservative, end up defending traditional values?[22]

In what is effectively a manifesto for an authentically liberal strategy, he asserts he could never be 'content with simply helping to apply the brake' on the 'vehicle of progress' and that the first question the true liberal must ask 'is not how fast or how far we should move, but where we should move'.[23] The liberal is a reformer who looks to flatten all the obstacles to 'free growth' because they have faith in the benefits of change arising from the 'spontaneous forces of adjustment' associated with individual interactions. Conservatives do not share this faith and therefore fall back on traditional authority in the hope of keeping an 'orderly' grip on change.[24] In other words, a true liberal believes in evolution – in the notion that human societies undergo cultural evolution (as distinct from biological evolution) – and considers that 'neither moral nor religious ideals are proper objects of coercion' by the state.[25] At a political level, conservatives are prepared to

use coercion to make time stand still, thereby revealing that they are not interested in placing limits on executive power. Neither do they have any qualms about imposing their own moral and religious ideals on others, and, in both these respects, they are similar to the socialists, even if their motivations are different:

> I sometimes feel that the most conspicuous attribute of liberalism that distinguishes it as much from conservatism as from socialism is the view that moral beliefs concerning matters of conduct which do not directly interfere with the protected sphere of other persons do not justify coercion.[26]

In Hayek's view, the conservatives' error here is twofold. First, they are setting a bad example by exercising coercion, the upshot of which is sometimes to promote socialist solutions despite themselves. Second, they prove to be incapable of proposing an alternative to the dominant path (which happens to be socialist) and so focus only on the speed of change, not the direction. It is therefore 'the fate of conservatism to be dragged along a path not of its own choosing'.[27] The liberals are the only ones able to combat socialism effectively because they *can* propose an alternative path.

Ultimately, then, the battle of ideas with the collectivists would be played out in the arena of visions for the future, and Hayek was counting on the Mont Pelerin Society to help him wage this battle. As he stated on many occasions, the only way to supplant socialism was to serve up an alternative utopia; in 1949, he wrote: 'The very courage to indulge in Utopian thought is in this respect a source of strength to the socialists which traditional liberalism sadly lacks.'[28] He formulated the programme for his new think-tank as follows:

> We must make the building of a free society once more an intellectual adventure, a deed of courage. What we lack is a liberal Utopia, a program which seems neither a mere defense of things as they are nor a diluted kind of socialism, but a truly liberal radicalism which does not spare the susceptibilities of the mighty (including the trade unions), which is not too severely practical, and which does not confine itself to what appears today as politically possible.[29]

Alliances between liberals and conservatives would, admittedly, be necessary to combat socialism, but this should not be allowed to mask deep divergences of opinion:

> The common resistance to the collectivist tide should not be allowed to obscure the fact that the belief in integral freedom is based on an essentially forward-looking attitude and not on any nostalgic longing for the past or a romantic admiration for what has been.[30]

Nothing would do more to promote socialism than the defence of established elites or the out-of-hand rejection of new knowledge and ideas. By the same token, a true liberal does not blindly defend nationalism and imperialism on the grounds that their country is superior to others. Rather, they belong to 'the party of life, the party that favors free growth and spontaneous evolution'.[31] Hayek struggled to find the right label for such a party since the word 'liberal' had become a source of confusion, especially in the United States. On the one hand, it had been appropriated by radicals and socialists and on the other, *liberty* had itself become a tradition, meaning that for some, the defence of institutions guaranteeing freedom equated to defending the status quo in its entirety. To avoid such confusion, Hayek was inclined to characterize himself as an 'Old Whig' from the eighteenth century, who was concerned above all with setting limits on government power. But what he tends to skate over in this essay is the crucial importance for the functioning of the market order of tradition and the familiar values of religion and family. In *The Constitution of Liberty*, by contrast, Hayek describes a 'voluntary conformity' to such values and goes so far as to assert that 'reverence for the traditional' is 'indispensable for the working of a free society'.[32]

Indeed, it is in this area that he makes a curious exception to his opposition to coercion, since when it comes to saving a 'free society' coercive action may be permissible and even essential: 'In some instances it would be necessary, for the smooth running of society, to secure a similar uniformity by coercion, if such conventions or rules were not observed often enough. Coercion, then, may sometimes be avoidable only because a high degree of voluntary conformity exists, which means that voluntary conformity may be a condition of a beneficial working of freedom.'[33] But what precisely are these instances, and how would such coercion be exercised?

To understand this apparent exception to Hayek's rule of non-coercion, we need to bear in mind that one of the most important distinctions he makes is between arbitrary coercion and spontaneous evolution. This is consistent with the other oppositions that structure his thinking: *taxis*

(deliberately constructed order) versus *kosmos* (spontaneous order arising from common practices); *thesis* (the laws of lawmakers) versus *nomos* (the rules of just conduct that arise from human interactions and are later codified in law); and reason versus tradition. The rules of the market, which like moral values provide the foundation for society and the economy, are not the result of arbitrary decisions – they are the fruit of a spontaneous evolution that gives rise to tradition. Institutions, moral codes and rules of economic conduct are an inheritance from the past that have gradually been selected, conserved, transformed and passed on by previous generations, precisely because they have proved useful to a particular human group by improving its survival chances and ability to out-compete other groups: 'The basic tools of civilization – language, morals, law and money – are all the result of spontaneous growth and not of design.'[34] These rules, values and institutions have progressively been adopted because they were adapted to our needs, habits and relationship with our environment, as if they were the fruit of an invisible hand that succeeded in selecting the best solutions without any conscious intent. They were emphatically not designed according to a preconceived and supposedly rational plan. Market rules and moral rules arise from the same spontaneous process and their sole function is to serve as normative benchmarks for our dealings with each other. Wendy Brown rightly highlights the 'ontological symmetry Hayek establishes between moral codes and market rules'.[35] Without them, society would come unstuck and be exposed to insidious enterprises that would sound the death knell for a free society. The normative framework of Western civilization is unique in harmonizing these market and moral rules. According to Hayek, the market could only establish itself 'by the spreading of certain gradually evolved moral beliefs which, after they had spread, most men in the Western world learned to accept'. These rules were learned by 'independent farmers, artisans and merchants' who

> held an ethos that esteemed the prudent man, the good husbandman and provider who looked after the future of his family and his business by building up capital, guided less by the desire to be able to consume much than by the wish to be regarded as successful by his fellows who pursued similar aims.[36]

For Hayek, these moral values are not complementary to the market but fundamental to its smooth running: 'Of these conventions and customs of

human intercourse, the moral rules are the most important but by no means the only significant ones.'[37]

It is precisely because the moral and economic order, like language and intelligence, is the fruit of spontaneous evolution that it needs to be safeguarded from the rationalist and 'constructivist' assumptions that have underpinned Western concepts of progress.[38] Spontaneous orders have two main properties: they are unintentional and unpredictable.[39] People are unaware of the justification for the rules they follow, because those rules originate from human interactions, not conscious design. They are obeying tradition, not reason: 'What has made men good is neither nature nor reason but tradition.'[40] *Tradition* here means all the rules of conduct within a group that keep our primitive biological instincts in check and ensure our survival and supremacy over other groups. These rules became ever more abstract and impersonal as society expanded and the division of labour became more pronounced, and they have been internalized more or less unconsciously. One might be tempted to draw parallels with Röpke's conservatism here, and Hayek does indeed believe that 'all progress must be based on tradition'.[41] On the other hand, he is not, like Röpke, advocating a return to small communities:

> And though we must constantly re-examine our rules and be prepared to question every single one of them, we can always do so only in terms of their consistency or compatibility with the rest of the system from the angle of their effectiveness in contributing to the formation of the same kind of overall order of actions which all the other rules serve.[42]

Since moral and economic rules underpin the system, the only admissible alterations are those which repair malfunctions and iron out normative inconsistencies and thereby reinforce the system. The cultural evolution of a market society, with its little corrections and improvements, is necessarily slow and incremental – starting again from scratch, which is what a revolution would supposedly entail, is out of the question. Innovation is only legitimate when it obtains the approval of society as a whole – a striking paradox: innovative tinkering at the edges requires the consent of the conformist majority. There is no place for minorities who do not conform, and a plurality of values and customs is excluded from the outset. Freedom can only be enjoyed if everyone conforms to the norm. This is

hardly an original stance, reactionaries having long argued that it is not possible to be free if one gives in to one's cravings and impulses.

However, the moral ideals that the market needs to function smoothly have been increasingly subverted by the rekindling of primitive urges, such as envy and a clamouring for materialist consumption and equality, unleashed by living and working within large societies. In this sense, socialism, which has been awakened by these transformations of lifestyle and workplace, is 'strictly an *atavism* based on primordial emotions', as indeed is the brand of conservatism that seeks to return to the small, self-contained bands of primitive times.[43] The whole civilizing process is challenged by the emergence of this 'counter-culture' and its demands for social justice.[44] And, since the group no longer exerts sufficient moral control over the individual, the intervention of an external power is required to suppress such instincts, which returns us to our initial observation: coercion to defend traditional values would only appear to be necessary and legitimate when an innovation threatens the normative framework of a free society. And what is threatening it specifically is this barbarian regression: the resurgence of the primitive instincts of jealousy and envy, along with the 'atavistic' ideas of equality and distributive justice. To counter this, two specific superstitions need to be confronted: first, the egalitarianism of the socialists, which undermines individual endeavour and merit as well as personal responsibility; and second, psychoanalysis, which is destroying culture by seeking to release repressed natural drives. The latter is responsible for permissive education and the counterculture, which have, in turn, fostered a climate conducive to 'terrorists'.[45] Marx and Freud ('the greatest destroyer of culture') are the bogeymen of this great menace that has to be neutralized.[46] Hayek's brand of liberalism thus accords an important role to the collective repression of what might strike the majority as immoral and purely instinctual. Contrary to what he claims, this position does not imply a simple laissez-faire attitude towards cultural selection, nor is such a system based solely on 'voluntary obedience'. Rather, constant vigilance and repression is required to combat these enemies of free society and to tenaciously preserve respect for hierarchy and tradition in the face of egalitarian excesses and the permissive society, for it is the whole system that is at stake. Such repression does not normally fall to the state, the desired outcome usually being achieved partly through the influence of religion over public opinion and partly through the judiciary, whose job it is

to capture the *nomos* of society (that is, the rules of just conduct arising from human interactions). In other words, it is a general tendency towards conformism among the population and the codification of social relationships that accounts for the gradual adaptation of traditions to human needs. But, in circumstances of absolute necessity, the state may have to resort to coercion to defend institutions and values – an idea already found in Edmund Burke, whom Hayek much admired: 'Society requires . . . [that] the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done by a power out of themselves.'[47] In this respect, Hayek is indeed a conservative, albeit of a more subtle variety; he may claim to reject the idea of sovereignty, but he lets it in again through the back door.[48]

For this reason, we would not entirely concur with Wendy Brown when she argues that the aggressive defence of moral and religious traditions we see today among evangelical churches and far-right movements is at odds with Hayek's programme. While she correctly highlights the process of 'privatization by familialization', in other words the desire to extend the personal, protected sphere of the individual, she implies that the politicizing of moral traditions and exploiting of faith by evangelicals is a departure from, and to some extent a distortion of, Hayek's thought.[49] What she perhaps fails to take sufficiently into account is that, for him, the idea of allowing evolution to take its natural course necessarily involves determining and preserving the framework within which it is to take place, by force if necessary. To wage a political battle in defence of tradition and religion is not to betray liberalism but to ensure the peaceful evolution of society. For Hayek, religion is an extremely effective safeguard against the rationalist and constructivist threat of social egalitarianism and moral permissiveness, which in his eyes are the inevitable consequence of the welfare state. We should not forget that Hayek is waging a war of ideas and praising the gentle evolution of civilization will not be enough to win it. He requires a utopia and is not bothered if it turns out to be eminently religious, so long as it exerts sufficient influence over people's minds to drive out the socialist demons. Thus, on the one hand, Hayek can indeed be aptly described as a reactionary writer on account of his defence of tradition, but, at the same time, he is happy to champion a rousing utopia capable of attracting a maximum number of ardent supporters. The utopia he has in mind is a society where freedom, meaning a broad sphere in which

individuals can act as they please without any state interference (providing they adhere to the prevailing moral codes), is considerably extended to encompass health, education, culture and retirement – in short, all the domains in which the state is currently heavily involved and where, for want of a consensus, it is obliged to impose constraints.

The superiority of Western civilization

It turns out that the various pioneers of neoliberalism were ultimately all defenders of traditional morals, which, along with the market and private property, they considered to be the bedrock of Western civilization. Even his emphasis on adaptation did not prevent Lippmann from linking 'the fate of freedom' to the defence of 'the sum total of the tradition of the Western world, its religion, its science, its law, its State, its property, its family, its morality, and its notion of the human person'.[50] What was innovative about Lippmann and Hayek, however, was that they defended traditional morals not as conservative guardians of a past order; rather, they saw such morals as a prerequisite for adapting to the new economic order or else as the product of spontaneous social evolution. Put another way, instead of seeking to justify traditional morals by appealing to essentialist principles, they attributed to them a unifying function. Looked at in broad terms, neoliberal doctrine is thus an evolutionary perspective whose endpoint is Western civilization, which explains why the greatest prudence should be exercised when tampering with the existing moral and sociological framework, the functioning of the market and the rule of law. Moreover, this civilization should be regarded less as a fixed ensemble of values and attitudes than as the objective expression of evolving behaviours that nevertheless remain rooted in tradition. Inherent to this perspective is an opposition between civilized evolution and *barbarian regression*, which serves to justify the use of coercion against those who invent cultural practices that break with tradition. We should also bear in mind that, for evolutionarily minded neoliberals, any form of collectivism or egalitarianism qualifies as a regression to a barbarian and tribal society. This is what Hayek meant when he described adherents of the 1960s and 1970s counterculture as 'non-domesticated barbarians', a threat to civilization.[51]

The idea that the purpose of updating liberalism is to protect Western civilization from the many dangers that threaten it is a guiding principle in neoliberal thought, and it was just as present when the Walter Lippmann Colloquium got under way in 1938 as it was in the 1947 document setting out the objectives of the Mont Pelerin Society. But what exactly is meant by the laudatory term *Western civilization*? For Hayek, it is the extended order that arises from spontaneous evolution that has ensured the superiority of an open society over what he calls closed societies, meaning tribal societies governed by a primitive morality and primitive instincts (solidarity, altruism) – and the common name for such an order is *capitalism* (though Hayek does warn of some confusion surrounding this word). To put it another way, what all neoliberal thinkers place under the generic banner of *Western civilization* is the specific and geographically delineated culture developed by the West (albeit not homogeneously or continuously) whose foundational elements are to be found in Greek and Roman society and the Italian cities of the Renaissance, and which achieved its fullest expression through liberalism and the development of industry. Defending Western civilization thus comes down to defending a superior West against the inferior civilizations of China, Africa and Latin America, whose ways of life Hayek has no qualms about describing as backwards, primitive and barbarian. Asserting the superiority of Western civilization turns out to go hand in hand with a dismissive assessment of the worth (or rather lack of worth) of non-Western civilizations.

But it was perhaps Mises who, in his final work, *Theory and History*, put the most overtly racial spin on this worldview. Claiming that, in the past, it would have been impossible to speak of the superior achievements of one race compared to another, he argues, however:

> It is different in our age. The non-Caucasians may hate and despise the white man, they may plot his destruction and take pleasure in extravagant praise of their own civilizations. But they yearn for the tangible achievements of the West, for its science, technology, therapeutics, its methods of administration and of industrial management . . . Whatever people may say about Western civilization, the fact remains that all peoples look with envy upon its achievements, want to reproduce them, and thereby implicitly admit its superiority.[52]

In evoking this racial interpretation of history, Mises naturally denies any racist intentions. Asserting the superiority of Caucasians over non-Caucasians would require biological evidence, which ‘so far’ has not been

forthcoming; it is only ‘on the ground of historical experience’ that ‘it is quite correct to assert that modern civilization is the white man’s achievement’ – but this ‘justifies neither the white man’s racial self-conceit nor the political doctrines of racism’.[53] There is a degree of equivocation here which entitles us to speak of an implicit racism – in practice if not in principle – in asserting the superiority of the achievements of ‘modern civilization’. In fact, Mises is reiterating arguments already found in his 1927 work *Liberalismus*. In a somewhat simplistic account of slavery, he argues that the practice is contrary to the principles of liberalism for one fundamental reason, ‘namely that free labor is incomparably more productive than slave labor’. He also downplays the violence inherent in the institution of slavery, claiming: ‘As a rule . . . the treatment of bondsmen by their masters was humane and mild.’[54] In a similar vein, while condemning the horrors of colonialism and reflecting on what a liberal policy towards the colonies should look like, he adopts a stance that it would be difficult to describe as anything other than neocolonial:

> European officials, troops, and police must remain in these areas, as far as their presence is necessary in order to maintain the legal and political conditions required to insure the participation of the colonial territories in international trade. It must be possible to carry on commercial, industrial, and agricultural operations in the colonies, to exploit mines, and to bring the products of the country, by rail and river, to the coast and thence to Europe and America. That all this should continue to be possible is in the interest of everyone, not only of the inhabitants of Europe, America, and Australia, but also of the natives of Asia and Africa themselves. Wherever the colonial powers do not go beyond this in the treatment of their colonies, one can raise no objection to their activities even from the liberal standpoint.[55]

The conscience of other neoliberal authors was just as untroubled in defending colonization and characterizing the independence movements of the 1950s and 1960s as being as great a threat to Western domination as communism. Admittedly, not all neoliberals subscribed to this viewpoint, but anti-colonialists such as Rüstow were for a long time in a distinct minority. Edmond Giscard d’Estaing, for example, an ex-director of colonial banks and eminent member of the Mont Pelerin Society, was one of the most ardent defenders of this domination: ‘To deny the civilizing role of colonization would be to deny the evidence.’[56] Others were ready to deploy the worst racist clichés, attributing underdevelopment to the laziness of the natives, for instance. Rougier was certainly not shy about stereotypes, invoking everything from Arab fatalism to Asian nirvana and pre-logical

magical thinking.[57] Röpke, for his part, was an active supporter of apartheid in South Africa, extolling in his lectures 'the extraordinary qualities of its white population'.[58] He believed that colonization, direct investment and the opening of markets was more beneficial for development than public aid, which would merely extend the perverse logic of social welfare to the rest of the world. He bitterly reproached 'Western masochists' (many of them Americans) for feeling guilty about their superior civilization. His assertion that 'only completely confused ideologists such as the so-called "liberals" in South Africa . . . can seriously propose that one should give the blacks full political equality within the framework of a unified South Africa' is an indication of the blatant racism to which the neoliberal doctrine of evolutionism can lead.[59]

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1 Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West*, Columbia University Press, 2019.

2 Barbara Stiegler, *'Il faut s'adapter': Sur un nouvel impératif politique*, Gallimard (NRF essays), 2019, p. 15.

3 Pierre Bourdieu, *Acts of Resistance: Against the Tyranny of the Market*, trans. Richard Nice, New Press, 1998, pp. 34–5: 'In a general way, neo-liberalism is a very smart and very modern repackaging of the oldest ideas of the oldest capitalists. It is characteristic of conservative revolutions, that in Germany in the 1930s, those of Thatcher, Reagan and others, that they present restorations as revolutions.' On this subject, see also Christian Laval, *Foucault, Bourdieu et la question néolibérale*, La Découverte, 2018, pp. 225ff.

4 In the words of Jean Solchany: 'Wilhelm Röpke is the José Ortega y Gasset of Switzerland in the post-war years and people find his apocalyptic rhetoric fascinating.' Jean Solchany, *Wilhelm Röpke, l'autre Hayek. Aux origines du néolibéralisme*, Éditions de la Sorbonne, 2015, p. 50.

5 Wilhelm Röpke, *Civitas humana: A Humane Order of Society*, trans. Cyril Spencer Fox, William Hodge & Co., 1948.

6 Röpke, *Jenseits von Angebot und Nachfrage*, Eugen Rentsch, 1958.

7 See Solchany, *Wilhelm Röpke, l'autre Hayek*, p. 405. This biography of Röpke gives the lie to attempts to portray the neoliberal sociologist as a moderate counterpoint to the 'ultra-liberal' Hayek and as a champion of an 'anti-capitalist liberalism'.

8 Wilhelm Röpke, *The Social Crisis of Our Time*, trans. Annette and Peter Schiffer Jacobsohn, University of Chicago Press, 1950 (1942), p. 6.

9 Ibid., p. 164.

10 Röpke's ideas were highly influential in Catholic circles and helped shape the fundamental tenets of German Christian democracy. See Solchany, *Wilhelm Röpke, l'autre Hayek*, p. 41.

11 Röpke, *The Social Crisis of Our Time*, pp. 10–11.

12 Ibid., pp. 15–16.

13 Ibid., p. 42.

14 Ibid., p. 213.

15 Ibid., p. 32.

16 See ibid., pp. 115ff.

17 Patricia Commun, in her sympathetic treatment of ordoliberalism, suggests that the brand of capitalism to be found in Southern Germany, Switzerland and Northern Italy would have 'delighted'

Röpke. Patricia Commun, *Les ordolibéraux. Histoire d'un libéralisme à l'allemande*, Les Belles Lettres (Penseurs de la liberté), 2016, p. 372.

18 Röpke, *The Social Crisis of Our Time*, p. 221.

19 Ibid., p. 260.

20 Friedrich Hayek, 'Why I Am Not a Conservative', in Hayek, *The Constitution of Liberty*, University of Chicago Press, 1960, pp. 397–411.

21 Ibid., pp. 397, 395, 400.

22 Brown, *In the Ruins of Neoliberalism*, p. 13.

23 Hayek, 'Why I Am Not a Conservative', p. 398.

24 Ibid., p. 400.

25 Ibid., p. 402.

26 Ibid.

27 Ibid., p. 398.

28 Friedrich Hayek, 'The Intellectuals and Socialism', in George B. de Huszar, ed., *The Intellectuals: A Controversial Portrait*, Free Press, 1960 (1949), p. 380.

29 Ibid., p. 292.

30 Hayek, 'Why I Am Not a Conservative', p. 410.

31 Ibid., p. 408.

32 Friedrich Hayek, *The Constitution of Liberty*, University of Chicago Press, 1960, pp. 62–3.

33 Ibid., p. 61.

34 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, vol. 3, p. 163.

35 Brown, *In the Ruins of Neoliberalism*, p. 106.

36 Hayek, *Law, Legislation and Liberty*, pp. 164–5.

37 Hayek, *The Constitution of Liberty*, p. 62.

38 TN: Hayek uses the word *constructivism* to denote something that has been consciously and rationally designed (as opposed to something that has evolved spontaneously).

39 See Jean-François Kervégan, 'Y a-t-il une philosophie libérale? Remarques sur les œuvres de J. Rawls et F. von Hayek', *Rue Descartes*, no. 3, January 1992, pp. 51–77.

40 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 160.

41 Ibid., vol. 3, p. 167.

42 Ibid.

43 Ibid., vol. 3, p. 165.

44 Ibid., vol. 3, p. 174.

45 Ibid., vol. 3, p. 175.

46 Ibid., vol. 3, p. 174.

47 Edmund Burke, *Reflections on the Revolution in France*, Stanford University Press, 2001 (1790), p. 219.

48 See Chapter 4.

49 Brown, *In the Ruins of Neoliberalism*, p. 115. See also Hayek, *The Constitution of Liberty*.

50 From Walter Lippmann's address, cited in Jurgen Reinhoudt and Serge Audier, *The Walter Lippmann Colloquium: The Birth of Neo-Liberalism*, Palgrave Macmillan, 2017, p. 107.

51 Friedrich Hayek, 'The Atavism of Social Justice', in Hayek, ed., *New Studies in Philosophy, Politics, Economics, and the History of Ideas*, University of Chicago Press, 1985, p. 67.

52 Ludwig von Mises, *Theory and History: An Interpretation of Social and Economic Evolution*, Ludwig von Mises Institute, 2007 (1957), p. 333.

53 Ibid., p. 334–6.

54 Ludwig von Mises, *Liberalism: The Classical Tradition*, trans. Ralph Raico, Foundation for Economic Education, 1996 (1927), p. 21.

55 Ibid., p. 96.

56 Edmond Giscard d'Estaing, 'Libéralisme et colonialisme', eighth gathering of the Mont Pelerin Society, Saint-Moritz, 2–8 September 1957, cited in Solchany, *Wilhelm Röpke, l'autre Hayek*, p. 379.

57 Solchany, *Wilhelm Röpke, l'autre Hayek*, p. 381.

58 Ibid., p. 392.

59 Ibid., p. 400.

7

The False Choice Between Globalism and Nationalism

People tend to associate the advent of neoliberalism with the Pinochet regime in Chile, the Thatcher government in the UK and the Reagan administration in the United States. But it was not just through the conquest of power in various nation-states that the neoliberals hoped to neutralize their socialist adversaries. Already in the 1930s and 1940s, plans for a new global economic order were at the heart of the neoliberal agenda. The objective was still to bar the way to socialist central planning and the emergent welfare state, but the enemy was more specifically defined as *economic nationalism*, meaning the tendency of states to protect their economies in such a way as to satisfy demands for social solidarity and autonomous industrial and agricultural development. There was a danger that this kind of self-centred nationalism would lead to a 'disintegration' of the world economy, which the neoliberals conceived of as an interdependent whole founded on supranational institutional arrangements.[1] Admittedly, they had to reconcile themselves to the proliferation of nation-states in the twentieth century, which began after the First World War and continued after the Second World War with decolonization. But acknowledging the political reality of nations did not equate to accepting their complete economic autonomy. This conception of the global economy was founded on the notion of 'a double government' consisting of the political governance of people (*imperium*) and the economic management

of commodities and property (*dominium*).[2] According to this distinction, nation-states remained in charge of political governance but had to allow their economy to be subsumed within a world economic order characterized by the international division of labour and free competition.[3] But when commercial and banking regulations or technical, health and labour norms constrained competition, hampered industry and reduced competitiveness, nationalism changed its spots and suddenly became a legitimate way of circumventing the norms of a global order that was damaging domestic businesses. It is true that this brand of nationalism is quite distinct from the developmentalism of Latin America and the Third Worldism (generally of a socialist bent) of many newly independent countries. It is the nationalism of the powerful seeking to emancipate themselves from rules that are applicable to everyone else but clash with their dogma of freedom. This is the fundamental political dilemma that has marked neoliberalism from the outset: a free-competition society can be promoted by either the globalist or the nationalist approach, depending on the interests and respective strengths of states at various points in their history. In this respect, the protectionism of Trump and Brexit are not the radical novelties they are sometimes portrayed as.

The global economy as a weapon against economic solidarity

Robbins, Hayek, Mises, Haberler, Michael Heilperin and Röpke, who spent time together from 1935 onwards at the Geneva Graduate Institute at the invitation of William Rappard, all elaborated plans for an international federation whereby a supranational government would be entrusted with establishing a common framework for an interdependent global economy, depriving nation-states in the process of the necessary levers to manage their economies in a such a way as to promote a solidarity of interests at the national level. As early as 1937, Robbins was busy imagining a ‘liberal world federation’ founded on free competition and the completely unrestricted movement of capital whose purpose would be to prevent central planning and protectionism when it came to industry and agriculture.[4] In a 1939 essay, Hayek saw ‘interstate federalism’ as a way of undermining a national solidarity of interests, while for Mises a supranational government overseeing the global economy should be

endowed with an appropriate police force to ensure the 'limitation of sovereign rights of every country': 'Measures which affect debts, the money systems, taxations, and other important matters have to be administered by international tribunals, and without an international police force such a plan could not be carried out. Force must be used to make debtors pay.'[5]

These proposals resembled the competitive federalism that James M. Buchanan would later identify as an essential component of what he called the post-socialist political economy.[6] Such an economy would see a concerted effort to rein in social welfare to furnish the best possible conditions for capitalist investment. Röpke used a martial metaphor in 1942 to designate the strategic targets of this new global economic order:

> The fortress of American protectionist policy can only be taken after the fortress of the New Deal has been taken, and after all of the theories of the 'mature economy', of 'deficit spending' and 'full employment' have been cleared out, and the monstrous misuse of power of the large interest groups, including farmers and labor unions, has been dammed.[7]

The international economic order had to put an end to the politicizing of the economy by the 'total state', the spoils of which various vested interest groups were plundering. Röpke's objection to economic nationalism was that it failed to distinguish between the *imperium* (political control) and the *dominium* (economic management), whereas, in an ideal liberal world, these two spheres (states with their borders on the one hand, and a borderless economy on the other) would be kept strictly separate. Schmitt argued in a similar vein, in *The Nomos of the Earth* of 1950, that the world had split, in the nineteenth century, into a global economy without borders, which corresponded to the sphere of the *dominium*, and the realm of nation-state sovereignty, whose scope had contracted and was now confined to the sphere of the *imperium*.[8] But, whereas Schmitt showed that, in many regions of the world dominated by the great powers, sovereignty had been stripped of its substance, Röpke wrote an enthusiastic review of the book in which he presented this strict separation between public and private domains as the whole point of establishing a liberal global economic order. The organizing of the global economy was no longer to be entrusted to a supranational federal government; rather, it was for the nation-state to establish an 'economic constitution' in order to 'maintain and actively produce the salutary division between private property and public law'.[9] By

the end of the 1930s, it was already obvious to the neoliberals that this international economic order would not arise as a natural result of capitalism and that it would require a concerted political effort to eradicate the Keynesian tools that a nation could use to protect its economy from being completely integrated into a competitive global economy. As Heilperin observed in 1939, ‘economic internationalism’ was ‘a policy intended to prevent political boundaries from exercising any disturbing effect on economic relations between areas on the two sides of the frontier’.[10] Ever since then, the neoliberals, who maintain close links with international business circles through the International Chamber of Commerce (ICC), have sought to lobby international institutions in order to impose their own vision of globalization.

Lobbying for international safeguards for capital

After the founding of the International Monetary Fund (IMF) and the World Bank through the Bretton Woods Agreement of 1944 and the signing of the General Agreement on Tariffs and Trade (GATT) in 1947, the international economic order still only partially corresponded to the neoliberal vision. The Bretton Woods system still allowed national governments to gear their economic policies towards establishing a welfare state and pursuing the objective of full employment. The Mont Pelerin Society’s 1947 mission statement, which inaugurated what Hayek himself called the neoliberal movement, concluded with a commitment to work on the ‘problem of the creation of an international order conducive to the safeguarding of peace and liberty and permitting the establishment of harmonious international economic relations’.[11] However, achieving harmony and international peace meant waging a battle on several fronts against what Röpke called a ‘democratic fury’ (*rabies democratica*), as embodied in the recently founded United Nations whose new rhetoric of human rights and Third World development (above all the principle of ‘one country, one vote’) seemed to constitute a direct threat to economic freedom. The Mont Pelerin Society member Michael Heilperin, who at the time was also a member of the UN Economic and Social Council (ECOSOC), had sensed the danger and actively lobbied the ICC to withdraw the proposal to set up the International Trade Organization (ITO) – a body that was supposed to

complete the Bretton Woods system. As it would have given a vote to every country, there was a risk that the planned ITO would enable Third World countries to break with free-trade orthodoxy and keep out foreign competition in order to protect their emerging industries and pursue policies of domestic development and full employment.

Another Mont Pelerin member, Philip Cortney, also played an important role in contesting the capital controls that had been built into the Bretton Woods system. He was critical of the inclusion of the right to work in the Universal Declaration of Human Rights, even as he sought to establish mobility of capital as a human right. The social democratic vision of human rights and international law was thus undermined in favour of international laws that protected capital.[12]

But the neoliberals were also worried about the expropriations of industries and land in foreign territories – something that was increasingly happening in emerging markets. In 1952, the UN General Assembly stated: 'The right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty.' The former German chancellor Ludwig Erhard, another member of the Mont Pelerin Society, expressed deep concern at what he viewed as a serious threat to the private ownership of assets abroad. The German Society to Advance the Protection of Foreign Investments reacted by resurrecting the International Code of Fair Treatment for Foreign Investors, the first version of which Heilperin had drafted for the ICC in 1947 and which was designed to guarantee that investors' rights over their holdings abroad would take precedence over citizens' rights to collective ownership.[13] It elaborated a document entitled the 'International Convention for the Mutual Protection of Private Property Rights in Foreign Countries'. Its president, Hermann Josef Abs, who had played a leading role in expropriating the Jews during the Second World War, spoke about the 'security of capital' in his dealings with bodies responsible for international law and argued for the creation of an independent court of arbitration with the power to rule on potential breaches of investors' rights – what he called a 'capitalist Magna Carta'.[14] Though Abs's international convention never came to pass, the principle was incorporated into the first ever bilateral trade treaty between Germany and Pakistan. This Treaty for the Promotion and Protection of Investments was signed in 1959 when Ludwig Erhard was economic affairs minister and

came into force in 1961. There now exists around two thousand accords of this kind, often included in free trade treaties.

In campaigning to delay the introduction of democratic principles into international trade relations, the neoliberals succeeded in forging a private form of international law that protected assets in the fashion of an 'economic constitution dividing the public world of states from the private world of property'.[15]

The European economic constitution – 'everything at my command!'

In the battle to establish an international neoliberal economic order, the European question played a decisive role. At the inaugural gathering of the Mont Pelerin Society in 1947, an entire day was devoted to 'the problem and chances of European federation'. But Europe quickly became a central bone of contention between the neoliberals and resulted in the emergence of two camps: the 'universalists', who opposed European integration; and the 'constitutionalists', who, by contrast, saw it is a chance to introduce an 'economic constitution'.[16] Universalists such as Röpke viewed the Anglo-American relationship as the cornerstone of the global economy and saw in the European integration project of the early 1950s (with the creation of the European Coal and Steel Community (ECSC) in 1952) the danger of a protectionist bloc emerging that would fragment a liberal international economic order, of which GATT was the best guarantor in their eyes. The signing of the Treaty of Rome in 1957, which involved European powers eliminating for their colonies the trade barriers they had erected in the case of non-European countries and the introduction of the highly protectionist Common Agricultural Policy in 1962, must have confirmed their worst fears of a 'fortress Europe' under the yoke of French *dirigisme* helping to bring about the dreaded disintegration of the global economy.

Other German ordoliberals who played a key role in negotiating and implementing the Treaty of Rome took an alternative route, however, helping to ensure that European integration was synonymous with an economic constitution that set the framework for a competitive and open market. Müller-Armack and Erhard elaborated an economic-integration model based on undistorted competition at the Ministry of Economic Affairs, of which Erhard was then in charge and where the jurist Hans von

der Groeben also developed the concept of a competitive common market. The latter was one of the authors of the Spaak Report in 1956, which formed the basis for the Treaty of Rome negotiations, and he also presided over the committee in charge of the common market discussions (on which Müller-Armack also sat). The treaty that was signed in 1957 specified neither the exact arrangements nor the rules for implementation, and it fell to Von der Groeben to oversee its application as the chair of the working party on competition policy and later as the director-general of competition from 1961 to 1967. He put together a team that included Ernst-Joachim Mestmäcker, a disciple of Franz Böhm, and they worked together on synthesizing German ordoliberalism and Hayek's work of the 1960s on the constitution. In a 1963 speech to the Dortmund Chamber Of Commerce, Hayek set out for the first time his idea of a bicameral system consisting of lawmakers in charge of the everyday business of state (the 'telothetes') and those responsible for the creation and interpretation of private law (the 'nomothetes').[17] It was an idea that had not merely national but global pretensions: 'the slow production of a supranational order, in which all national governments could pursue practical goals while still being subordinated to common rules that would simultaneously protect citizens from the arbitrariness of their ruler'.[18] Drawing inspiration from this concept, Von der Groeben realized that the European treaty could become a supranational constitution that guaranteed individual economic liberties and prohibited national governments from adopting protectionist and redistributive policies. Regulation 17 would confer on the Court of Justice of the European Communities (CJEC) unlimited power when it came to imposing fines and sanctions for breaches of competition law.[19] For Mestmäcker, the goal of Von der Groeben's working party was unambiguous: 'It was about bringing the economic constitution of the EEC Treaty to life.'[20] The economic order thus arose from a political decision that is traceable in this instance not so much to Hayek as to Böhm, who declared that 'the idea of order . . . alone can represent the element of unity [that] illuminates the totality down to its last details', and opting for martial language, claimed it to be 'based on the sentence: everything at my command!'[21] Mestmäcker understood that in the European Economic Community (EEC) it was common law as enshrined in the treaty that could serve as a substitute for political decision-making. Europe was becoming a supranational legal order with a court of justice that guaranteed the

enforcement of common rules of private law that took precedence over the diverse bodies of national law. Hayek's 'nomocracy' – the dream of democratic governments and the public law of states being subordinated to the general provisions of private law enshrined in the constitution – was coming to pass in the form of the European treaty. Multi-level economic governance would subsequently be extended to the global economy with the GATT reforms of the 1970s and 1980s, and the creation of the World Trade Organization (WTO) in 1995. Far from being a consequence of the natural evolution of capitalism, the advent of neoliberal-style globalization arose from a deliberate determination to exploit supranational law as a deterrent against the adoption of policies by individual states that ran counter to the market order.

The neoliberal globalization tendencies of the left

Rather than challenging this new European and world order, the governing left actively chose to adopt it in the 1980s. In France, Jacques Delors, who served as minister of the economy from 1981 to 1984, was a key player in the decision to abandon Keynesian efforts to relaunch the economy and to steer the ruling Parti Socialiste (PS) towards monetary and budgetary restraint instead. For him, choosing the second option was not a reluctant concession to necessity but a victory that he had sought and ultimately won after a 'long, hard battle' within the left.[22] As president of the European Commission from 1985 to 1995, he played a major role in aligning French policy with the German ordoliberal stance that had previously often been at odds with France's dirigisme. As early as June 1985, in its *Completing the Internal Market* white paper, the Delors Commission advocated

> increased surveillance by the Commission in the field of competition rules to ensure that firms and Member States adhere to these rules [and to] ensure that the partitioning of the internal market is not permitted to occur as a result of protectionist state aids or restrictive practices by firms.[23]

With the backing of the French government, the Delors Commission pushed for greater capital mobility (until then very restricted within the common market), which ultimately led to the 1988 directive obliging member states to liberalize the movement of capital completely. This provision, of which

the Germans had long been in favour, was a decisive step towards economic and monetary union (EMU).[24] The 'European social model' associated with Delors corresponds precisely to the notion of 'social market economy' invented by Müller-Armack and promoted by the ordoliberals, wherein welfare provisions were conceived of as a by-product of the creation of a competitive economic order. Indeed, Delors defined it in characteristically neoliberal terms in 1995: 'The European model is, first, a social and economic system founded on the role of the market, for no computer in the world can process information better than the market.'[25] The term 'social market economy' was later included in the Treaty on European Union and became the mantra of the *deuxième gauche* (new left) socialists, a tradition running from Michel Rocard and the Confédération française démocratique du travail (CFDT) trade union federation all the way up to Lionel Jospin and François Hollande. Since 2008, it has been part of the Parti Socialiste's declaration of principles under the formulation 'social and ecological market economy'.[26] Other senior officials who served under François Mitterrand, such as Henri Chavranski (chair of the Committee for Invisible Transactions at the Organisation for Economic Co-operation and Development (OECD) from 1982 to 1994), Michel Camdessus (managing director of the IMF from 1987 to 2000), and more recently Pascal Lamy (WTO director general from 2005 to 2013), played decisive roles in establishing the norms for complete liberalization of capital flows.[27]

Beginning in the first half of the 1980s, this embrace of a 'left liberalism' was billed by its advocates as the advent of modern social democracy in the teeth of the 'old left' and the 'rear-guard trade unionists'.[28] This adoption of neoliberalism by the left was observed in many countries from the early 1980s onwards. Former social democratic parties – the Democratic Party in the US, the Social Democratic Party of Germany, the Labour Party in Britain and the Swedish Social Democratic Party – responded to the growing criticism of Keynesian economics by turning to a new generation of economic experts who no longer viewed the markets as beasts to be regulated but as a force to be harnessed to promote growth.[29] The immediate consequence was the abandonment of social redistribution programmes and economic policies designed to satisfy the demands of organized labour. In the new party branding and the championing of the 'cultural values' of the left, there was no room left for substantive policies

to advance social and economic rights.[30] The forging of a ‘Third Way’, most notably by Bill Clinton, Tony Blair and Gerhard Schröder, continued in the following decade with José Luis Zapatero, Matteo Renzi, Hollande and many others – the 1990s becoming the political expression of a genuine neoliberal globalism on the left.

When he took over the reins of the Labour Party in 1994, Blair amended Clause IV (drafted by Beatrice and Sydney Webb in 1917) of the party’s statutes, which set out ‘the common ownership of the means of production, distribution and exchange’ as one of the party’s aims. The revised clause instead states as an objective ‘a dynamic economy, serving the public interest, in which the enterprise of the market and the rigour of competition are joined with the forces of partnership and co-operation to produce the wealth the nation needs’. This political and economic stance found its expression in a ‘wholehearted’ enthusiasm for free trade accords and neoliberal globalization.[31] For Anthony Giddens, it was about building a ‘cosmopolitan nation’ that was open to the world both economically and culturally.[32] The Third Way governments used neoliberal globalization and the European Union’s Maastricht provisions to pursue policies of salary containment, budgetary austerity and curtailment of social and economic rights that were sometimes more brutal than those of right-wing governments. Clinton led the way by deregulating the banking system and signing the North American Free Trade Agreement (NAFTA), thereby speeding up deindustrialization and a fall in the living standards of American workers, especially those employed in the industrial sector.[33] Such policy decisions had major political repercussions for left-wing governments, which lost a significant part of their traditional working-class base; at the same time, the neoliberal right was prompted to shift ever further right in response.

Competition-centred nationalism

Since the 2010s, and above all since 2016, an authoritarian strain of neoliberalism – nationalist (when it was not simply racist) and often morally libertarian – has taken centre stage. Until Trump’s defeat in November 2020, it was on a roll in Europe as well as North and South America. The explanation for the widespread nature of this phenomenon is

to be found in its globalist neoliberal roots, which took hold in the 1980s and grew in the 1990s. The left's complete embrace of globalism and globalized elites was bound to breed working-class resentment. We will see in the next chapter how the political battleground shifted on the question of values, but our goal here is to explain why large swathes of the right in Europe and around the world became nationalist while remaining (or becoming even more) neoliberal.

While acknowledging that parties seeking to set themselves apart from each other is a standard tactic in the political game, it is worth examining the various strategies adopted by neoliberals to distinguish themselves from each other. Brexit and the Trump presidency embody a neoliberal path that has never been abandoned by certain factions of the conservative right. Once again, it was Margaret Thatcher who formulated the clearest expression of nationalist neoliberalism.

On 20 September 1988, she gave a resounding speech to the College of Europe in Bruges that set an anti-European neoliberalism in train and included the famous line: 'We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels.'[34] She condemned protectionist measures and what she called the 'appointed bureaucracy' (Brussels) in the name of free trade, free enterprise and open markets, implicitly taking aim at the Commission under its then president, the French socialist Jacques Delors. A few weeks later, at the Conservative Party conference, she explained that her Bruges speech had 'brought into the open [a] fundamental question', 'the choice between two kinds of Europe: a Europe based on the widest possible freedom for enterprise or a Europe governed by Socialist methods of centralised control and regulation'.[35] As she would later write in her memoirs, it was on behalf of the nation that she defended a Europe of enterprise and a European market with a strict minimum of regulation: 'Ultimately, however, there was no option but to . . . raise the flag of national sovereignty, free trade and free enterprise – and fight.'[36] A few months after Thatcher's speech, the Bruges Group was set up – a Tory Eurosceptic think-tank whose members included Alan Sked and Nigel Farage and which sowed the seeds of Brexit.[37]

Strategically speaking, Thatcher signalled a radical turning point by setting free-trade universalism in opposition to the 'artificial megastate' of a predatory Europe.[38] The shift in perspective is striking in its magnitude: the

nation is no longer that ever-dangerous space within which the dictates of democracy can give rise to customs barriers, central planning and wealth redistribution through taxation; on the contrary, it is now the rampart against the new regulation-laden globalism of a socialist-leaning and bureaucratic Europe. It is a combat unit engaged in a competitive trade war that must not allow itself to become bogged down in multilateral obligations, still less supranational rules laid down by Brussels. In short, in its Thatcherite formulation, neoliberal nationalism becomes what one might (somewhat paradoxically) dub a radical neoliberal universalism that stands firm against the proliferation of norms arising out of treaties and the numerous prescriptions of international organizations. Thatcher thus paved the way for a new *competition-centred nationalism* that is embraced by many governments today and has undermined the globalism of the 1990s, as it continues to undermine the European Union.

As early as the 1980s, one can identify in embryonic form the principal elements of this neoliberal nationalism: the championing of the people against global elites bent on plundering a nation's resources, of national sovereignty in the face of supranational bureaucracies, and of national identity amid the corrosive effects of cultural globalization. When the Brexiteers stated their intention of building a 'global Britain' and a 'Singapore-on-Thames', or when Steve Bannon and Donald Trump set about implementing an 'economic nationalism' and turning their backs on multilateralism and the international obligations of the United States, they were adopting a strategic approach that already had a history.

The new nationalist agenda of the right and its theoretical roots

Politics around the world has been lastingly shaped by the unprecedented pre-eminence of right-wing extremism – not just among far-right parties but across the right of the political spectrum, and indeed among certain left-leaning governments. The political debate is currently in thrall to questions of identity, racism and nationalism, which have originated not from the standard old fascist wellspring but from competition-centred nationalism. Every key element of the Thatcherite vision of Europe was adopted by Identity and Democracy (initially the European Alliance for People and Nations), the European Parliament political group that consisted of MEPs

from the Rassemblement National (France), Lega Nord (Italy), Vlaams Belang (Flanders), Alternative für Deutschland (Germany) and Freiheitliche Partei Österreichs (Austria). Boasting a 'political project [based] on the upholding of freedom, sovereignty, subsidiarity and the identity of the European peoples and nations', they advocated 'voluntary cooperation between sovereign European nations, and therefore reject any further evolution toward a European superstate'.[39]

The essence of this far-right stance has been spelled out by Republican political theorists of the paleolibertarian persuasion in the United States. Murray Rothbard, for example, elaborated a critique of globalism based on the idea that the new world order was being used as a stepping stone to a global welfare superstate, signalling a return to the globalism of Wilson and Roosevelt. Rothbard's bête noire was NAFTA and its advocates, whose 'devotion to freedom and free trade is somewhat akin to Leonid Brezhnev's'. He saw the agreement as leading to offshoring and the imposition of punitive measures on national companies, forced as they were to align themselves with Mexican and Canadian legislation under pressure from 'leftists', environmentalists and unionists.[40] NAFTA constitutes a loss of sovereignty that can be compared to 'European superbureaucrats in Brussels', with the creation of 'supra-government commissions . . . which have acquired super-sovereignty over Americans'.[41] In the face of these globalist measures, he called for a 'New Populist Coalition' and a 'New Nationalist program' to overthrow the transnational elite.[42] To achieve this, NAFTA needed to be abrogated and the US had to withdraw from all supranational government bodies (including the UN, the WTO and UNESCO), cease all development aid and toughen up immigration rules to prevent the expansion of the welfare state – all in the name of genuinely free markets. Echoing Thatcher in this respect, individual aspirations to property ownership and a national ethnic identity are amalgamated in Rothbard's critique of globalization, which he sees as equating to a 'unitary world "democratic" government', resulting in 'world taxation and world socialization [that] would totally and irreversibly suppress the liberty and property of Americans'.[43] But he went further still, defending the concept of 'nations by consent', meaning borders founded on voluntary consent and private ownership, allowing the nation-state to be 'deconstruct[ed] into constituent nationalities and neighborhoods'.[44] He also advocated a genuine right of secession based on a kind of property-owning ethnic

fundamentalism which would later influence the radical-right secessionists of Vlaams Belang, La Lega and AfD, and which is consistent with a view of freedom predicated on the right not being forced into living in interdependence with those not of one's own choosing.[45] His watchword was 'desocialization'.[46] This critique of 'world democratic government' was thus part of a broader project to combat the state, as well as the elites who use the state to exploit taxpayers.[47] Rothbard urged rapid action: 'We need a dynamic, charismatic leader who has the ability to short-circuit the media elites, and to reach and rouse the masses directly.'[48] Rothbard cited examples of populist leaders such as Ross Perot and Patrick Buchanan, and also praised Silvio Berlusconi and La Lega under Umberto Bossi.[49] It was an anticipation of Trump, who for some observers is a perpetuator of the paleolibertarian tradition.[50] In this regard, critiques from the left all too often miss the crucial point. However extreme the forms that neoliberal nationalism may take, it cannot be understood unless one appreciates that it is a reaction to the neoliberalism of left-wing governments and that it exploits their serious failings on social and welfare issues. A failure to connect these two phenomena (and instead, interpreting the rise of national neoliberalism as a moral evil rather than as the left's abandonment of social justice when it signed up to neoliberal globalism) dooms us to the periodic re-emergence of a supposedly more decent neoliberalism – but one that is, in fact, just as damaging as before (the election of Joe Biden being the latest such episode). When elites bemoan the vulgarity of populism, there is often more than a hint of contempt for the base instincts of the people, as the *gilets jaunes* (yellow vest) protests in France amply demonstrated. Refusing to fall into the polarizing discourse of those who set globalists against nationalists is an indispensable first step to arriving at a lucid analysis of the current political situation.

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1 To use Röpke's preferred term. See Wilhelm Röpke, *International Economic Disintegration*, William Hodge & Company, 1942.

2 This is Hayek's term. See Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism*, Harvard University Press, 2018, p. 12.

3 This Roman law distinction between the categories of *imperium* and *dominium* particularly appealed to Röpke. See Röpke, *International Economic Disintegration*, p. 96.

4 Lionel Robbins acknowledged that this liberal federation 'would involve some inequality of income'. See Lionel Robbins, *Economic Planning and International Order*, Macmillan, 1937, cited in Slobodian, *Globalists*, p. 101.

5 Ludwig von Mises, ‘Letters from Citizen Readers’, *Ottawa Citizen*, 19 August 1944, cited in ibid., p. 111.

6 See James M. Buchanan, *Post-Socialist Political Economy. Selected Essays*, Edward Elgar, 1997.

7 Röpke, ‘Die Internationale Wirtschaftsordnung der Zukunft: Pläne und Probleme’, *Schweizer Monatshefte*, vol. 22, no. 7, October 1942, cited in Slobodian, *Globalists*, p. 115.

8 See Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen, Telos Press Publishing, 2006.

9 See Liat Spiro, ‘Global Histories of Neoliberalism: An Interview with Quinn Slobodian’, Toynbee Prize Foundation (toynbeeprize.org), 21 March 2018.

10 Michael A. Heilperin, *International Monetary Organization*, Longmans, Green and Co., 1939, cited in Slobodian, *Globalists*, p. 93.

11 Mont Pelerin Society, ‘Statement of Aims’, 8 April 1947 (montpelerin.org).

12 On this subject, see also Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, Verso, 2019.

13 What Quinn Slobodian, adopting Hayek’s phrase, calls the primacy of ‘xenos rights’ over those of the citizen. See Slobodian, *Globalists*, p. 123.

14 See Taylor St John, *The Rise of Investor-State Arbitration: Politics, Law, and Unintended Consequences*, Oxford University Press, 2018.

15 Slobodian, *Globalists*, p. 140.

16 To adopt Slobodian’s distinction. Ibid., pp. 182–217. For more on the economic constitution, see Chapter 4.

17 For Hayek’s interpretation of this notion, see Chapter 4, p. 79.

18 Hayek, ‘Recht, Gesetz und Wirtschaftsfreiheit’ (1963), cited in Slobodian, *Globalists*, p. 206.

19 See Brigitte Leucht and Katja Seidel, ‘Du Traité de Paris au règlement 17/62: Ruptures et continuités dans la politique européenne de la concurrence, 1950–1962’, *Histoire, économie et société*, vol. 27, no. 1, 2008, pp. 25–36. On the central role of the CJEC, see Chapter 4.

20 Ernst-Joachim Mestmäcker, ‘Auf dem Wege zu einer Ordnungspolitik für Europa’, in Ernst-Joachim Mestmäcker, Hans Möller and Hans-Peter Schwarz, eds, *Eine Ordnungspolitik für Europa*, Nomos, 1987, cited in Slobodian, *Globalists*, pp. 207–8.

21 Franz Böhm, *Die Ordnung der Wirtschaft als geschichtliche Aufgabe und rechtsschöpferische Leistung*, 1937, cited in ibid., p. 211.

22 Jacques Delors, quoted in Rawi Abdelal, ‘Le consensus de Paris. La France et les règles de la finance mondiale’, *Critique internationale*, vol. 3, no. 28, July–September 2005, p. 91.

23 Commission of the European Community, *Completing the Internal Market. White Paper from the Commission to the European Council*, Brussels, June 1985.

24 Abdelal, ‘Le consensus de Paris’.

25 Charles Grant, ‘Delors: After Power’, *Prospect*, 20 October 1995.

26 *Déclaration de principes du Parti socialiste*, 14 June 2008.

27 See Abdelal, ‘Le consensus de Paris’; Pascal Lamy, *The Geneva Consensus: Making Trade Work for All*, Cambridge University Press, 2013.

28 ‘Left liberalism’ is a term used by the political advisor Alain Minc in his book *L’avenir en face* (Le Seuil (L’histoire immédiate), 1984), cited in François Cusset, *La décennie. Le grand cauchemar des années 1980*, La Découverte, 2008, p. 93. The phrases ‘old left’ and ‘rear-guard trade unionists’ are borrowed from Nicole Notat, CFDT secretary-general in 1995, who voiced his support for Alain Juppé’s pension reforms.

29 Stephanie L. Mudge, *Leftism Reinvented: Western Parties from Socialism to Neoliberalism*, Harvard University Press, 2018.

30 For more on the new electoral strategy of the left and its segmenting of society, see Chapter 8.

31 See Tony Blair’s statement to the WTO ministerial conference, Geneva, 1998.

32 Anthony Giddens, *The Third Way: The Renewal of Social Democracy*, Polity, 1998, pp. 65–6.

33 On the responsibility of the Clinton era for degrading working-class living standards, see Nancy Fraser, 'Progressive Neoliberalism versus Reactionary Populism: A Hobson's Choice', in Heinrich Geiselberger, ed., *The Great Regression*, Polity, 2017, p. 120.

34 Margaret Thatcher, 'The Bruges Speech' to the College of Europe, Bruges, 20 September 1988.

35 Margaret Thatcher, 'Speech to Conservative Party Conference' at the Brighton Centre, 14 October 1988.

36 Margaret Thatcher, *The Downing Street Years*, HarperCollins, 1993, p. 728.

37 See Quinn Slobodian and Dieter Plehwe, 'Neoliberals against Europe', in William Callison and Zachary Manfredi, eds, *Mutant Neoliberalism: Market Rule and Political Rupture*, Fordham University Press, 2019, pp. 89–111.

38 Thatcher, *The Downing Street Years*, p. 728.

39 See the 'About' section on the group's website, identityanddemocracy.eu.

40 Murray Rothbard, 'Stop Nafta!' (October 1993), in Murray Rothbard, *Irrepressible Rothbard: The Rothbard-Rockwell Report. Essays of Murray N. Rothbard*, Center for Libertarian Studies, 2000, p. 142.

41 Ibid., p. 144.

42 Murray Rothbard, 'The Lessons of the Nafta Struggle: What Next?', *Rothbard-Rockwell Report*, vol. 5, no. 1, January 1994.

43 Murray Rothbard, 'The Nationalities Question', in Murray Rothbard, *Irrepressible Rothbard: The Rothbard-Rockwell Report. Essays of Murray N. Rothbard*, Center for Libertarian Studies, 2000, p. 229.

44 Rothbard, 'Nations by Consent: Decomposing the Nation-State', *Journal of Libertarian Studies*, vol. 11, no. 2, Autumn 1994.

45 On this influence, see in particular Slobodian and Plehwe, 'Neoliberals against Europe'.

46 Murray Rothbard, 'How and How Not to Desocialize', *Review of Austrian Economics*, vol. 6, no. 1, 1992.

47 In 1977, he composed a lengthy memorandum on behalf of the Cato Institute (financed by the Koch brothers), entitled 'Toward a Strategy of Libertarian Social Change', in which he explicitly cited the methods of Lenin and Hitler as examples of how a strategic victory could be achieved.

48 Murray Rothbard, 'A Strategy for the Right', in Murray Rothbard, *Irrepressible Rothbard: The Rothbard-Rockwell Report. Essays of Murray N. Rothbard*, Center for Libertarian Studies, 2000, p. 11.

49 Murray Rothbard, 'Revolution in Italy!', *Rothbard-Rockwell Report*, vol. 5, no. 7, July 1994.

50 Matthew Sheffield, 'Where Did Donald Trump Get His Racialized Rhetoric? From Libertarians', *Washington Post*, 2 September 2016.

8

Culture Wars and Dividing the People

Neoliberalism is a distinctly Janus-like phenomenon, one face being dynamic and modernist, the other conservative, with a central place accorded to tradition, family and even the Christian religion. As we have already seen, from the outset there has been a strategic tension within neoliberal doctrines between, on the one hand, modernizing society to adapt it to the market order and, on the other, defending (or resurrecting) traditional ways of life. Both are top-down, authoritarian methods of controlling and imposing certain norms on the population.

From the perspective of neoliberal history, there is therefore nothing particularly original or unusual about evoking the traditional values of family, religion and nation, which are of such key importance to current right-wing and far-right governments and parties (Donald Trump, Jair Bolsonaro, Viktor Orbán, Jarosław Kaczyński). The moral, religious, traditionalist and family-centred core of classic neoliberalism played a major role in the initial anti-egalitarian counter-offensive waged by Pinochet, Thatcher and Reagan. Perfectly summed up by the American Christian right tripartite motto ‘faith, family, freedom’, this agenda has gained momentum in recent years. Why neoliberalism commandeered an ideology apparently alien to it is not the right question to ask; rather, we should be seeking to understand why this restoration of traditional values is intrinsically bound up with it.

At the same time, restricting ourselves to a critique of the most conservative and authoritarian forms of neoliberalism would be to miss the

bigger contemporary picture. For the success of neoliberal governments in establishing themselves as an irresistible force for transforming society is attributable precisely to the dual forms they can assume: the reactionary right-wing type and the modernizing left-wing version. In the latter form, neoliberal governmentality has consisted of jettisoning the historical struggle for social equality in favour of cultural and moral causes, which, although they are separately legitimate, can hardly supplant the central importance of social and economic class inequality. Serving to disguise a fundamental agreement across the political spectrum on the need for neoliberal economic policies, this left-wing shift to the domain of values is one of the most important political phenomena to have emerged in recent decades. It helps to explain how neoliberalism has come to occupy such a wide range of political terrains, and why an authoritarian and conservative version of it has triumphed in certain countries.

This dual tendency among neoliberal governments has resulted in a polarization and saturation of the entire political space in developed capitalist nations. Nancy Fraser has analysed this political saturation by drawing on Antonio Gramsci's concept of hegemony and distinguishing between reactionary and progressive neoliberalism, the two currents forming a 'hegemonic bloc' in society and constituting a sort of *political and ideological duopoly*.[1] Interesting though this distinction is, it does not explain how this division arose historically, nor how it operates. This is only possible through an examination of the dynamic interplay between these two rival political strategies.

So-called culture wars should not be seen as some kind of surrogate for the class struggle (in the way that the ideological battle between the proponents of capitalism and socialism could be); rather, they function as a substitute for social confrontation, and also as an outlet for the anger of the victims of the neoliberal system.[2] Because they have succeeded in mobilizing certain segments of the electorate and persuading them to endorse certain policies (relating to taxation in particular) that are highly favourable to the richest in society, these culture wars have played, and are continuing to play, a crucial role in perpetuating neoliberalism.

A cultural counterrevolution

In the 1960s and 1970s, several developments – a climate favouring the extension of women's rights (and access to contraception and abortion), significantly more freedom to divorce, the progressive decriminalizing of homosexuality and transsexuality, a recognition of the civil and political rights of ethnic minorities, the embrace of new lifestyles by the young, the aesthetic value attached to transgressions of every kind – posed a serious challenge in many Western nations to traditional patriarchal and family values, and to prevailing social mores more generally. At the same time, wider society shifted and became increasingly secular. As the historian Andrew Hartman notes of the United States, the counterculture that sprang up in opposition to 'the normative America of the 1950s' scored a series of substantial victories up until the 1980s and 1990s, especially in cities and among the university-educated middle class, not just in the States but in every Western nation.[3] The conservative right around the world riposted with a cultural counterrevolution designed to eradicate the vestiges of the sixties and sweep away the heritage of May 1968 in France. It was at this point that there emerged what Melinda Cooper has dubbed 'the neoliberal-new social conservative alliance'.[4] In authorizing a coalition with central figures of US conservatism such as Irving Kristol and Daniel Bell, this alliance conferred an unprecedented strategic power on conservatism (even though, as we saw earlier, it had been part and parcel of neoliberal thinking from the outset). It was predicated 'on the necessity of reinstating the family as the foundation of social and economic order', or more precisely of 'the free market order'.[5] Thatcher occupies a special place in this story, having from very early on integrated into her political agenda both an emphasis on the market and traditional conservative themes ranging from the patriarchal family to the nation.[6] Her great skill, which right-wing parties around the world have sought to emulate ever since, lay in her ability to flatter and exploit working-class attachment to domestic hierarchies, religious values and deference to authority. Admittedly, the right has not universally sung from the Thatcher hymn sheet. In France and Italy, for example, a modernizing wing close to 'innovative' business circles who swear by Schumpeter's 'creative destruction' attempted to combine individual freedom with economic freedom, at a time when the conservative wing, with its triple aspiration to economic freedom, social conformism and moral strictness, remained faithful to Hayek (and even Röpke).[7]

It was this reactionary right in the classic sense of the term – traditionalist, nationalist, often bigoted and (at least implicitly) racist – that in the United States, Europe and many other parts of the world spearheaded the cultural counterrevolution aimed at dismantling the civic, cultural and social rights secured by the democratic movements of the 1960s and 1970s. This surely found one of its most explicit expressions in alt-right circles, who hijacked anti-discrimination rhetoric to denounce the 'oppression' suffered by majority groups and traditional identities at the hands of Muslim 'invaders', black people and feminists, painting an apocalyptic picture of a white civilization threatened with extinction by an ideology of equality that was characterized as a 'revolt against nature'.[8] In opposition to theories of how gender and race are socially constructed, these right-wing libertarians trumpet a 'new counter-culture' founded upon 'sex realism' and 'race realism' – the supposed biological differences between the sexes and races.[9] As Wendy Brown has pointed out: 'This rage takes shape as "freedom" to be a racist, a sexist, a homophobe or Muslim hater, and to push back against the "tyranny" of the left that tries to outlaw this.'[10] Redefined as the exercise of freedoms and rights, these hateful attitudes invoke the legitimate violence of an authoritarian state or justified self-defence.[11]

But this reactionary revolt has also assumed the form of an all-out moral crusade, targeting women's rights in particular and mobilizing large crowds to protest against gay marriage. Indeed, the fight against abortion, contraception and sexual freedom has become a global phenomenon and is still going strong today. When in power, the Christian right and the far right have, in many countries, sought to overturn legislation authorizing abortion and they have had some successes – in Poland, for example, in October 2020 the Constitutional Court declared abortion on the grounds of foetal abnormalities to be unconstitutional.[12] The very act of championing equality between men and women and combating violence against women is seen as undermining the patriarchal order. On occasion, even access to divorce has been threatened by the right when in power, as was the case in Italy in 2018, when La Lega was part of the government.[13] Well before Bolsonaro came to power, the Brazilian right consistently attacked the progress made in terms of rights for women, gay people, domestic workers and black and mixed-race people.[14] Though there may be some variations on the theme (depending on the cultural and historical context in each

country where, with varying degrees of intensity and frequency, these standard attacks on cultural freedoms are currently being orchestrated), we can identify the same bellicose rhetoric and the same stated objective: to restore a supposedly natural and moral order based on tradition and on the heterosexual family unit as the foundation and supreme value of Western civilization. Such a restoration is always defended in the name of a religious freedom deemed essential for preserving Christian values in the public arena. An event called the World Congress of Families was held in Verona in March 2019 and was attended by Salvini, La Lega's minister for the family Maurizio Fontana and numerous far-right figures from around the world, including the Hungarian leader Viktor Orbán.[15] Along with abortion and immigration, the principal targets of this reactionary gathering were gay marriage, the LGBTQ+ lifestyle and gender theory.[16]

The emphasis on family values is in fact merely one aspect of the general backlash against demands for equality. It has its more mercantile equivalent in the theory of human capital developed by Gary Becker, an eminent member of the Chicago School in the 1960s. This theory, as Michel Foucault pointed out, sees private and family investment in bringing up and educating children as an alternative to public investment. From this perspective, bank loans are seen as a substitute for wealth redistribution through taxation and public services.[17] The application of the human-capital theory to the family, set out by Becker in *A Treatise on the Family* of 1981, not only justified the dismantling of the welfare state but could also be used to discredit the aspirations of the countercultural left, including demands for sexual liberation. Far from being depicted as a space of alienation and oppression, the family was recast as a kind of firm in which rational parents would turn all their attentions to accumulating human capital with the highest possible rate of return. The neoliberal promotion of traditional family values thus derives not merely from a certain theological and moral conception of the world, nor is it a shabbily utilitarian or cynical ploy. It is part of a broader strategy to supplant redistributive mechanisms and social solidarity with an exclusively private (as opposed to public) outlook wherein, in the spirit of capital accumulation, the unpaid reproductive labour of women plays a major role.[18]

The *freedom tradition* in opposition to true freedoms

The new neoliberal governments are both defenders of tradition and the nation, and the champions of *individual freedom* – a concept that in the modern age carries an incontestable universal moral value and endows neoliberalism with a legitimacy that cannot be overestimated. Following a very Hayekian logic, these neoliberals understand freedom as part of *tradition*, and antithetical to any tendency towards emancipation.[19] This right-wing amalgam of freedom and tradition, characterized by the glorifying of national sovereignty, the sacred status accorded to the autonomous family unit, and the notion that religion has the right to set moral norms, is the antithesis of the emancipatory conception of freedom born out of the Enlightenment that became a mainstay of mainstream political liberalism. The classic conception of freedom entailed a reflection on its preconditions, including the freedom of the press, the free circulation of ideas, education and universal suffrage, all of which were understood as basic aspects of citizenship. Perhaps not enough attention has been paid to the new definition of freedom put forward by Lippmann in his opening remarks to the 1938 colloquium, in which he criticized efforts to 'resuscitate the formulas of nineteenth-century liberalism'. He was of the view that:

> We err every time we adhere to one of the numerous liberal sects. Every time we confuse the cause of freedom with doctrines such as that of natural law, that of popular sovereignty, the rights of man, of parliamentary government, the right of self-determination of peoples, of *laissez-faire* or free trade.[20]

He urged a clean break with the core conception of freedom elaborated in the eighteenth century to counter oppression, which linked together individual rights, civil liberties and political and economic freedom. His conception was diametrically opposed: freedom no longer denoted a range of safeguards against the oppression of the individual and the collective but the right to assert a set of traditional values that he equated to civilization itself. It is precisely this new concept of freedom, involving a belief in the superiority of the West and the paranoid defence of a Western identity under siege, that the neoliberal and reactionary right deploys today to justify its violations of civil and individual liberties. Examples of just how antithetical this freedom-curbing mindset is to classical liberalism are legion. We see this in the attacks on academic freedom and the contempt in which science and the arts are held. Brazil, for example, has deployed a comprehensive

range of measures aimed at curtailing freedom of thought, culture and education, from governmental appointments of chief education officers to the administrative sabotaging of the national audiovisual archive and the extraordinary remarks made by the then special secretary for culture, Roberto Alvim, in January 2020 when he plagiarized a Joseph Goebbels speech, claiming that art should be ‘heroic’, ‘national’ and ‘imperative’. He also advocated the creation of ‘civic military schools’ where army-style discipline would be imposed and pupils inculcated with patriotic values.[21] But offensives against the universities are not unique to Brazil.[22] The most authoritarian side to neoliberalism is revealed in the attempts to take direct control of academia, research and the news. In France, despite the Macron administration’s proud claims to be defending the Enlightenment tradition and freedom of expression, there have been attempts (not seen since the days of the Vichy regime) to monitor academic and scientific research more closely and to limit press freedom, as evidenced by the draft bill of autumn 2020 which aimed to amend the 1881 law on press freedom in response to the terrorist threat.

Designating the enemy and redefining the *true people*

Appreciating this link with an idealized conception of freedom as something specific to the Christian West (and still more specifically to its white populations) is key to understanding the vehement nationalism with populist overtones that has gripped the reactionary right. Defending the frontiers of civilization, erecting walls to keep the foreign hordes out, defining the ‘native’ population more strictly and seeking to redefine national identity all go hand in hand. This far-right project involves, among other things, stigmatizing new enemies: the Mexicans for Trump, migrants in Italy and Hungary and Muslims pretty much everywhere. These enemies from the outside are added to the mix of political and cultural enemies from the inside: the Workers’ Party in Brazil, the European Union for the right in Britain and the leaders of Hungary and Poland and the Islamo-leftists for the Macron government and the French right. The racist and colonialist white supremacism in evidence in the United States and certain Latin American countries is merely an exacerbated form of this hatred for all the barbarian enemies of the free society.

This mode of government by values functions through demonizing foreign bodies in order to preserve the (imaginary) homogeneity of the group. It involves stoking moral panic by persuading people that the national community is in danger and that its integrity is threatened by the peril of migration, the intellectual perversion of the elites, globalization and multiculturalism. This top-down definition of the *people* naturally endows them, in contrast to the evil elites, with every imaginable positive attribute, whether in terms of faith, family, sexual orientation or patriotism. It is in the name of this *true people* that the state justifies its crackdowns on troublesome minorities who do not belong to this people. Salvini has distinguished himself by removing humanitarian protections for migrants and seeking to obstruct rescue operations at sea.

The neoliberal and reactionary right is writing a new national story that is based on resentment.[23] Orbán is constantly denouncing 'traitors to the fatherland' and presenting his country as the eternal historical victim of its neighbours and an ungrateful Europe.[24] The tone of this kind of rhetoric lends a new religious dimension to the definition of the nation, aided in the case of Trump and Bolsonaro by the support of the evangelicals, but also by Catholic conservatives, some of whom support a Christian renewal driven by charismatic figures. In this apparently incongruous amalgam of themes, the properly neoliberal thread transforms the other elements, resulting for example in a strange *neoliberalizing of religion*. Nowhere is this more evident than in the *theology of prosperity* preached by certain conservative evangelical churches in North and South America: not only does Jesus promise believers salvation in the afterlife, but also material wealth, physical health, social success and romantic success in this life. This curious gospel also assures the faithful that they will reap their donations to the church one hundredfold – a sure sign that these are very profitable business enterprises.[25] Meanwhile, the nation is also reinterpreted as an *entrepreneurial community*. Trump never tires of repeating that the United States is in a trade war and that the only way to survive it is to unite behind him. Orbán also sees this as a viable strategy for small countries, as he told his biographer in 2012: 'In my view, Hungary needs to be brought to the point where it's in a position to compete not only with the European states but also new world powers like China and Brazil.'[26]

Government by progressive values

But why is it that these culture wars, waged by the most conservative wing of the neoliberal right, resonate with a certain proportion of the working classes? How has this project succeeded in harnessing some of the social discontent? The reason the working classes have abandoned the left is that the left has abandoned them. Since the 1980s, left-wing governments have by and large espoused the same economic and social policies as the right – favourable to globalization and the European Union in external dealings and subject to global constraints on the domestic front. Indeed, they have sometimes been more audacious or determined, especially when it comes to modernizing the state to make it more businesslike, which has tended to entail the ubiquitous new public management (NPM) approach, privatization and the deregulation of the financial markets. This is the principal cause of the left's steady decline as a historically important force for social equality. It has admittedly remained committed to the emancipatory aspirations of young people and women that emerged in the 1960s and 1970s, but it has diluted them by associating them with the myth of enterprise, the cult of technological innovation, the promotion of consumerism and the development of the market-based financial system.[27] All told, it has neglected the fight against economic inequality in favour of supposedly modern, middle-class cultural values, while submitting without reserve to the new European and global neoliberal order. For Nancy Fraser, this 'progressive neoliberalism' has succeeded in amalgamating the promotion of the market and cutting-edge technology with the recognition of the rights of women and minorities – a combination made possible by a 'meritocratic' and individualistic conception of emancipation.[28] Beginning in the late 1990s and continuing into the early twenty-first century, it was key to the political success of a new left that went by various names: the New Democrats of Clinton, the Third Way of Blair and Schröder and, more recently, the 'global progress' of the Obama era.

The symbolic and political effectiveness of this metamorphosis of the left should not be underestimated. It has enduringly excluded any genuine political alternative that might have constrained or put an end to neoliberal domination, and it has had grave repercussions for the working classes and indeed for the left itself. The latter has squandered its perennial capital with the former and opened the door to the far and reactionary right, who have

lost no time in pouncing on the left's betrayal and exploiting social discontent for their own ends.

But as our focus here is on strategy, it is worth examining the content and scope of the choices made by the neoliberal left, which has willingly entered the cultural battleground imposed on it by the reactionary neoliberals since it is an easy terrain on which to differentiate itself. It has thereby actively contributed to the culture wars and the current polarization of the political scene. Whereas the neoliberal right likes to distinguish between the civilized and the barbarians, the left prefers an opposition between modern and retrograde approaches. Its electoral hunting ground has become certain segments of the middle and upper-middle classes, namely younger, more qualified urban voters who are broadly open to the world, tolerant of the diversity of sexual orientations, sensitive to environmental questions and disinclined to racism – in short, those who are unlikely to tolerate the traditional and authoritarian straitjacket that the reactionary right seeks to impose. These are the population segments who are expected to form the voter base of the liberal modern alternative to right-wing authoritarianism.

This initially implicit strategy was later put on a theoretical footing in the United States and became a strategic model for left-wing movements around the world. The aim of this *new progressivism*, as it came to be known in the early 2000s, was to create a piecemeal coalition that would afford the left a new electoral majority. There are two components to this strategy. First, it segments the electorate according to social and demographic criteria; and second, it shifts the political debate to a cultural battleground: what counts is the attitude that certain segments of the population entertain towards the future and, more specifically, the varying degrees to which they embrace progress. The left has undeniably abandoned any class-based (and indeed universalist) strategic model: there is no longer a central class or unifying collective story. Instead, there are heterogeneous segments defined by their attitude towards the future which can only be coalesced for electoral purposes in terms of their openness to cultural change.

This theoretical analysis of the 'new majority' has been spearheaded by Democratic strategists at the Center for American Progress.[29] The original problem they were faced with was how the Democrats were going to regain power after Al Gore narrowly lost to George W. Bush in 2000. The experts

decided that the electoral landscape was changing in favour of the Democrats due to demographic and cultural shifts in the American population.[30] Workers who had, since the New Deal, constituted the unwavering base of the Democratic Party were abandoning it on account of deindustrialization and cultural issues, on which they swung right. The strategists concluded that winning back the White House and Congress would only be possible by constructing a new political and above all cultural electoral majority. This implicitly meant that the Democrats could say goodbye to the support of white American workers because there was no question of revising the party's economic and social policies once it regained power. An impressive number of studies were commissioned to analyse the electorate in detail and identify the most progressive and most retrograde segments of the population. This research would result in the definition of a 'new progressive America', to quote the title of a 2009 report published by the Center for American Progress.[31] This group comprises a hotchpotch of graduates, young urban professionals, Hispanic immigrants, black people, sexual minorities (ideally living alone) and executives and non-believers, to name but a few. Of all the markers of progressivism, two criteria stand out as especially important: level of education and age. This new progressive America will be a different world than that of the New Deal's uneducated workers and will be spearheaded by the so-called millennium generation. It is an optimistic vision: the Republican electorate – older, whiter, more rural and more religious – is shrinking sociologically and becoming marginalized geographically, whereas the Democratic electorate is young and expanding demographically, particularly in cosmopolitan, multicultural cities that are open to the world. This demographic and cultural logic has even led to predictions of an end to the culture wars on the grounds that the millennium generation and the growing clout of minorities will ultimately sweep aside the conservative vote of ageing workers.[32]

Obama's victory in 2008 was seen as a striking confirmation of this cultural progressivism, which prompted many left-wing governments around the world to adopt certain strands of this piecemeal electoral strategy. In the spring of 2010, the Center for American Progress set up a working group of representatives from social democratic parties around the world (and Europe in particular) to reflect on how to construct alternative majorities.[33] This cultural progressivism made a splash in France in 2011

with the publication of a report by Terra Nova (a French think-tank close to the Parti Socialiste), which in truth drew heavily on the research of the Center for American Progress.[34] It did, however, present two rather unusual arguments. On the one hand, the working-class espousal of right-wing and far-right values purportedly had nothing to do with neoliberal policies but everything to do with the values of May 1968, which clashed with the traditional outlook of workers. On the other, the job of the 'new left' was not so much to protect 'insiders' as to help 'outsiders' to emancipate themselves.[35] The authors conclude: 'An attempt by the left to implement a class strategy centred on blue-collar workers and the working classes more generally would involve abandoning its cultural values, in other words renouncing social democracy.'[36] The new left, in other words, should play to the interests of the 'France of tomorrow' rather than to those of the retrograde working classes, who will never be properly integrated into the march of progress. Macron's 2017 election campaign, in stressing cultural values over social equality, was merely an appropriation of the strategy that had been specially tailored for the new left. The strategy does have a certain logic. The key social issue is no longer class inequality but the various obstacles that hinder social mobility and integration, it being the state's duty to remove these obstacles and emancipate people through education, professional training, digital culture and helping them onto the house-buying ladder. It therefore makes sense to focus efforts on the individuals who are keenest to emancipate themselves from traditional forms of socialization, to change their situation and be upwardly mobile and to free themselves from certain moral norms, religious beliefs, professional situations, economic rent and a habitus that has become too routine. The only political path deemed reasonable is to build an alternative neoliberal bloc to that of the right but *without traditional workers* (and even in opposition to them). In retrospect, we can see how this strategy of opposing modern and retrograde segments of the population, which Hillary Clinton sought to apply in her 2016 campaign, came undone in the face of a Republican electorate that was whipped up into a frenzy by Trump's cynical populism. Clinton's obvious contempt for those voters was doubtless a contributory factor to her defeat.[37] But it is nevertheless important to appreciate the historical dead end into which these culture wars between the reactionary right and the new progressive left are leading us.

Dividing the people by turning them against themselves

The abandonment of the working classes by the new progressive left, together with the right's espousal of certain working-class values (work, merit, family, authority), has redefined party relationships with the various social classes. We asked earlier how the most reactionary version of neoliberalism has of late managed to exercise such a hold over the working classes. Its success comes down to the fact that neoliberalism has not only manufactured the poison (the disintegration of social bonds, social inequality, economic insecurity) but also, in its right-wing form, proposed a fictitious antidote, namely the revalorization of an *us* consisting of simple, ordinary people: silent, hard-working peers and good citizens who obey the rules and are respectful of the state's authority. This unifying narrative that integrates every class (including the working classes) into a single nation has a triple thrust: it recreates an imaginary sense of a social community, reasserts the ideal of a sovereign state and adopts a radical stance towards individual freedom.

Using the term 'right-wing populism' to denote this strategy is problematic, for although it captures a certain style and rhetoric, it does not adequately account for the complex effects of this strategy. It is not so much a case of engineering a *single* people, as the word populism might suggest, as of dividing the people and, more specifically, of turning sections of the working classes against virtually all the gains of workers' movements, the welfare state, labour rights and the unions. By exploiting xenophobia and racism, this strategy has succeeded in enduringly undermining potential working-class unity in the struggle against the dominant classes. By nurturing the hatred of certain sections of the population for others (who are seen as a threat to their own standing and any benefits they might enjoy), it turns the *people* against itself, splitting it apart into communities with distinct and irreconcilable identities. Ultimately, only a rhetoric that vaunts the power of a strong state, especially when that state is armed with security legislation that is ever more inimical to freedom, can sustain the myth of an indivisibly unified national community. The contradictions of this strategy are legion: it is hardly easy to combine the principle of competition between individuals, market-based capitalism and the attachment to a closed national community. Not to mention the fact that populist rhetoric, which calls into question not only the elites but also the legitimacy of democratic politics,

has a self-destructive effect on the political system itself. The reactionary right has thus found itself caught up in an anti-liberal (or indeed protofascist) current, not least for a four-year period in the US which culminated in Trump supporters storming the Capitol on 6 January 2021, and as we have continued to see in many other countries, notably Hungary, Poland and Brazil. Trump's second term confirms and accentuates this drift towards neo-fascism.

The shortcomings of the progressive strategy have also been highlighted. The left believed it could rely on the cultural and emancipatory effects of globalization and greater individualism to secure durable (and perhaps even ultimately invincible) electoral majorities. Not only did it believe that it had a definitive advantage in the culture wars, because it assumed that demographic and economic changes were working in its favour, but also that it could attract segments of the electorate craving greater social mobility and integration into the grand bazaar of the market economy. But this reliance on appealing to such modern segments is not always enough to offset the electoral damage caused by neoliberal policies and their impact on the very same individuals. The successes of the reactionary right are, in fact, cruel proof of this: their modus operandi is the intensive exploitation of groups under the domination of neoliberal policies, particularly those implemented when left-wing parties were in power. This new left does not in truth have the political independence that it claims to have: the values that it ends up defending under pressure from the right and far right look remarkably similar to the worst forms of nationalism and state authoritarianism. Constantly taken to task for lacking authority and firmness, it tends to spout the talking points of its opponents on the right. We have reached a historic and comprehensive impasse: neoliberal policies are leading governing parties of all stripes, even those claiming to be modernizers, to brutalize society. Their unapologetic defence of the strong state is the final proof of the pudding.

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1 Nancy Fraser, 'From Progressive Neoliberalism to Trump – and Beyond', *American Affairs*, vol. 1, no. 4, Winter 2017. It is worth recalling that, for Gramsci, a 'historic hegemonic bloc' is not merely a class alliance but the unification of the economy and culture through a homogeneous perception of reality – a collective representation that is the very precondition for a coalition of social groups.

2 See James Davison Hunter, *Culture Wars: The Struggle to Define America*, Basic Books, 1991.

3 Andrew Hartman, *A War for the Soul of America: A History of the Culture Wars*, University of Chicago Press, 2015.

4 Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism*, Princeton University Press, 2017, pp. 22ff.

5 Ibid., pp. 49 and 57.

6 See Stuart Hall, *The Hard Road to Renewal: Thatcherism and the Crisis of the New Left*, Verso, 1990, p. 2.

7 Joseph Schumpeter believed that capitalism evolves through the continual destruction of outdated economic sectors, techniques and practices, these being replaced by new ones arising out of technological innovation and better forms of organization.

8 Christopher Chase Rachels, *White, Right, and Libertarian*, CreateSpace, 2018; Murray Rothbard, *Egalitarianism As a Revolt Against Nature and Other Essays*, Mises Institute, 2000 (1974).

9 Hans-Hermann Hoppe, *Getting Libertarianism Right*, Mises Institute, 2018. On the history of the alt-right and its culture war, see Simon Ridley, *L'alt-right: De Berkeley à Christchurch*, Le Bord de l'Eau, (Documents), 2020; Quinn Slobodian, 'Anti-'68ers and the Racist-Libertarian Alliance: How a Schism among Austrian School Neoliberals Helped Spawn the Alt Right', *Cultural Politics*, vol. 15, no. 3, November 2019, pp. 372–86.

10 Wendy Brown and Jo Littler, 'Where the Fires Are: An Interview with Wendy Brown', *Eurozine*, 18 April 2018.

11 Hans-Hermann Hoppe, *The Private Production of Defense*, Mises Institute, 2009. Elected to the US House of Representatives in 2020, Marjorie Taylor Greene was to be seen in one of her campaign posters posing serenely next to her husband on the doorstep of her neat and tidy house with a pump-action shotgun beneath the slogan 'Save America, Stop Socialism!'

12 Spearheaded by the United States, thirty-two governments, including those of Brazil, Uganda, Saudi Arabia, Poland and Hungary, signed the Geneva Consensus Declaration in October 2020, the stated purpose of which was to defend the family by contesting the acceptance of abortion as a human right.

13 In Italy, the draft bill sponsored by the La Lega senator Simone Pillon on shared custody of children in the event of divorce aimed to swing the balance in favour of men as fathers and husbands. By ending maintenance payments, awarding property to its owner and insisting on a mediation process to make a shared-parenting plan, the bill would have erected significant financial barriers to women getting divorced, not least because many don't work so that they can raise their children or wouldn't have earned enough to bear the new financial burden.

14 The following initiatives were denounced as inadmissible attacks on the Brazilian family, Christian values and the nation: the 2006 Maria da Penha law protecting women against domestic violence; the constitutional amendment that recognized domestic workers' rights; the 2012 amendment to the law on women's rights that authorized the abortion of a foetus with a congenital brain disorder; the 2011 legalizing of same-sex marriage by the Supreme Federal Court; and the 2012 quota law reserving 50 per cent of federal university places for students from state schools and those of black and indigenous descent.

15 This congress came into being at the end of the 1990s on the initiative of the US Christian right and Russian ultraconservatives with the aim of waging a coordinated battle against the enemies of a 'morally upright' society and traditional patriarchal society.

16 For a study of the backlash by Catholic and Muslim associations and right-wing elected representatives against the 2013 introduction of the ABCD equality curriculum in French primary schools, which was designed to combat sexism and gender stereotypes, see Fanny Gallot and Gaël Pasquier, 'Schools Put to the Test by "Gender Theory": The Effects of a Controversy', *Cahiers du Genre*, vol. 2, no. 65, 2018.

17 Cooper, *Family Values*, pp. 225ff. Analysing the importance of the family in American neoliberalism, Cooper remarks: 'It would not be an exaggeration to say that the enormous political activism of American neoliberals in the 1970s was inspired by the fact of changing family structures' (p. 8).

18 See, for example, Silvia Federici, *Le capitalisme patriarcal*, La Fabrique, 2019.

19 See Chapter 6 and Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West*, Columbia University Press, 2019, pp. 122–35. On the Hayekian opposition between freedom and the 'demand for release from traditional morals', see Hayek, *The Fatal Conceit: The Errors of Socialism*, University of Chicago Press, 1988, p. 65: 'Thus the notion of "liberation", although allegedly new, is actually archaic in its demand for release from traditional morals. Those who champion such liberation would destroy the basis of freedom, and permit men to do what would irreparably break down those conditions that make civilisation possible.'

20 'Address by Walter Lippmann', in Jurgen Reinhoudt and Serge Audier, *The Walter Lippmann Colloquium: The Birth of Neo-Liberalism*, Palgrave Macmillan, 2017, p. 103.

21 See Luiz Felipe Barbiéri, 'Bolsonaro exonera secretário da Cultura, que fez discurso com frases semelhantes às de ministro de Hitler', *Política*, 17 January 2020.

22 In Hungary, Fidesz has sought to undermine the independence of the Academy of Sciences and brought state universities under direct financial control. State primary and secondary schools, which since 1990 had been run by the local authorities, were also taken under central government control and the curriculum was centrally imposed. See Gyözö Lugosi, 'Hongrie: Un mélange embrouillé de nationalisme et de néolibéralisme', *Europe solidaire sans frontières*, 15 April 2019.

23 On this subject, see Brown, *In the Ruins of Neoliberalism*, Chapter 5.

24 In Europe, Prawo i Sprawiedliwość (Law and Justice, PiS) in Poland and Fidesz in Hungary are especially critical of the European Union, which they accuse of imposing norms contrary to the 'national interest' in terms of civil liberties and the independence of the judiciary and the media. These governments are clearly playing a double game: they accept European aid but refuse anything EU-related that would protect traditional liberal values or a basic social security net.

25 See Jason Hackworth, 'Religious Neoliberalism', in Damien Cahill, Melinda Cooper, Martijn Konings and David Primrose, eds, *The SAGE Handbook of Neoliberalism*, SAGE, 2018, pp. 329ff.

26 Viktor Orbán, quoted in Amélie Poinssot, *Dans la tête de Viktor Orbán*, Solin/Actes Sud, 2019, p. 120.

27 It is this osmosis that Luc Boltanski and Ève Chiapello (*The New Spirit of Capitalism*, trans. Gregory Elliott, Verso, 2005) and more recently David Hancock (*The Countercultural Logic of Neoliberalism*, Routledge, 2019) have sought to analyse, though they have tended to assimilate neoliberalism exclusively to the hijacking of the countercultural movement, completely overlooking the traditionalist strand.

28 Fraser, 'From Progressive Neoliberalism to Trump'.

29 The Center for American Progress is one of the Democratic Party's most important think-tanks. It is a fervent advocate of the party's centrist line and is financed by deep-pocketed donors, including Michael Bloomberg.

30 John B. Judis and Ruy Teixeira, *The Emerging Democratic Majority*, Simon and Schuster, 2002.

31 Ruy Teixeira, 'New Progressive America: Twenty Years of Demographic, Geographic, and Attitudinal Changes Across the Country Herald a New Progressive Majority', Center for American Progress, March 2009.

32 Ruy Teixeira, 'The Coming End of Cultural Wars', Center for American Progress, July 2009.

33 This project, spearheaded by the Center for American Progress and the Fundación Ideas para el Progreso, which is attached to the Spanish Socialist Workers' Party (Partido Socialista Obrero Español, PSOE) sought to devise a winning strategy that would be applicable everywhere in the belief that the growing inclination of workers to vote for the right and far right was a general trend. In 2010, the ex-leaders Felipe González and Bill Clinton launched the Global Progress Council whose purpose was to nurture the leaders of the future. This approach was adopted by Macron and the socialists who rallied to his side in 2017.

34 Olivier Ferrand, Bruno Jeanbart and Romain Prudent, ‘Gauche: Quelle majorité électorale pour 2012?’, *Terra Nova*, 10 May 2011.

35 Ibid., p. 55.

36 Ibid., p. 13.

37 At an ‘LGBT for Hillary’ gala fundraiser in early September 2016, Clinton said of Trump’s supporters: ‘You know, to just be grossly generalistic, you could put half of Trump’s supporters into what I call the basket of deplorables. Right? The racist, sexist, homophobic, xenophobic, Islamophobic – you name it.’

9

On the Workplace Front Line

Every transformation to have affected the labour market in the last thirty years or so has been justified in the name of an economic war whose watchwords are performance and competitiveness. Whether it is presented as an unavoidable reality to which we must adapt or perish, or as a challenge and an opportunity for innovation and free enterprise, this competitive struggle is the axiom governing every contemporary political and economic reform, and it is thus also at the very core of the neoliberalization of the workplace. The use of the word *war* in this context should not be taken as a mere metaphor, even if it does not normally imply recourse to armed force, as was the case during the UK miners' strike in the mid-1980s. In that standoff, Thatcher had no hesitation in deploying the police (the archives would later reveal that she had also elaborated a plan to send in the army), creating an atmosphere of civil war. As she explained on 19 July 1984: 'We had to fight the enemy without in the Falklands. We always have to be aware of the enemy within, which is much more difficult to fight and more dangerous to liberty.'[1] Commenting on this victory in her memoirs some years later, she added that the miners 'wanted to defy the law of the land in order to defy the laws of economics. They failed.'[2] But, even if this war of competition is not a war in the military sense of the term, it nevertheless resorts to strategies and practices that have an enormous impact. Of central importance is the legal arsenal deployed, to use the vocabulary of the Court of Justice of the European Communities, to 'modernise', 'provide greater flexibility' and reduce 'direct or indirect

labour costs' in order to elevate the norm of competition to the status of an inviolable principle.[3] However, this logic of a war of economic competition is not restricted to political and legal reforms – it extends to actual workplace situations. The goal of contemporary forms of management and corporate governance is to exploit every avenue to make companies as competitive as possible, which requires not only the total commitment of employees to outperform their rivals but also creates a sort of 'war of all against all' within individual workplaces.[4]

When applied to the world of work, the concept of war – the subject of many evocative film and book titles – is not therefore easy to analyse.[5] Already in 1999, Christophe Dejours observed that neoliberalism should be interpreted as a war designed to reinforce the 'domination of labour' and the 'appropriation of the wealth it produces'.[6] We can also detect here an offensive orchestrated by the capitalist class against the 'Fordist compromise' (see below) and the democratic potential of the workplace.[7] But how to identify the protagonists when the prosecution of this war involves the active (and even enthusiastic) participation of the very individuals who bear its brunt? Or to put it another way, how do we analyse the nature of this strange war – disingenuously characterized by the sober adjective *economic* – that has done away with the class struggle and encouraged people to engage instead in a struggle for jobs? The very originality and, indeed, effectiveness of this enterprise has muddied the waters and made it difficult to identify the protagonists involved. But perhaps what is ultimately more important than designating leaders and camps is mapping out the broad scope of this war, which, far from being restricted to economic globalization, encompasses the practices, rhetoric and modes of subjectification demanded by the greater flexibility and precarity of the labour market. And, indeed, there lies the front line and the point of this neoliberal offensive, which transpires to be just as much a mental and private affair as an economic and political one. It is a broad offensive whose principal objective is not merely to impose new workplace norms and reorganize labour but to render this process acceptable by casting it alluringly as an exercise in emancipation and self-fulfilment. This involves eradicating the conditions that could conceivably give rise to a class consciousness, thereby reducing the struggle to a battle between individuals: not only are other people seen as potential enemies but, more radically, we become *our own worst enemies* in playing by the rules of a

game in which the vast majority end up as losers. Understanding the genesis and specific mechanisms of the neoliberalizing of the labour market therefore requires us to jettison pacific conceptions of the 'new spirit of capitalism' as successfully imposing itself as the 'new ideological configuration' through a sort of elective affinity with the 'artistic critique' of the philosophy of May 1968.[8] Rather, we need to grasp its highly strategic dimension – its major targets are not merely the unions and a workforce protected by labour laws but also groups of co-workers and the mindset of individual workers.

From the war against trade unionism . . .

As we saw earlier, trade unionism was, from the outset, one of the primary targets of the neoliberal offensive.[9] Policies directly or indirectly inspired by Hayekian neoliberalism have aimed to reduce the bargaining power of the unions and to do away with what we will call the 'Fordist compromise' between organized labour and capitalist employers. Over the last forty years or so, this has had a considerable impact in terms of degrading employee rights and working conditions, while salaries have stagnated or been driven down. Two national examples taken from the US and the UK, which have experienced some of the most traumatic battles in this war against organized labour, will suffice to illustrate the point. Margaret Thatcher deliberately set out to break the unions (synonymous with 'undemocratic socialism' in her eyes) during the miners' strike called by the National Union of Mineworkers (NUM), then one of Britain's most powerful unions, which lasted from March 1984 until March 1985.[10] We know that she provoked this battle once she had won the Falklands War and that she had prepared for it by stockpiling coal and setting up specialist police units. She was well aware that pit closures and tens of thousands of redundancies would trigger a large-scale strike, especially in Yorkshire, historically a bastion of the English working-class movement. She waged a genuine civil war, with the police, armed like soldiers, attacking picketing miners and violently cracking down on protests.[11] The NUM leader Arthur Scargill was vilified by the press and the strike itself was portrayed as an illegal and anti-democratic insurrection. Nigel Lawson, then chancellor of the exchequer, went so far as to claim that crushing the NUM was as important as rearming

to face the threat of Hitler in the 1930s. The defeat of the miners, abandoned by the Labour Party, led to a more general defeat for blue-collar workers. Laws were passed that restricted the scope for collective action: closed shops were banned, secret pre-strike ballots were made obligatory and unions were made liable for unlawful industrial action. In this respect, Thatcher was applying Hayek's maxim that systematic use should be made of the law to counter popular demands, which effectively meant criminalizing industrial action.

In the United States, the first major neoliberal victory dates to the 1947 Taft-Hartley Act curbing union power. Still in force today, the act prohibited certain types of strike and introduced a raft of legal and administrative obstacles to setting up unions within companies. It enabled the restriction of union rights, which is precisely what states in the South and in the centre of the country, where labour rights were previously strong, immediately proceeded to do. Voted through by a Republican-majority Congress, the act reversed the progressive provisions of the New Deal, and particularly the National Labor Relations Act (NLRA) of 1935, which encouraged the unionization of American workers and sought to curb the power of employers by preventing them from indulging in unfair practices in relation to organized labour. The rhetoric of business leaders hostile to the NLRA and the members of Congress who voted through the Taft-Hartley Act was clearly shaped by the arguments put forward by Hayek in *The Road to Serfdom*, which had been a bestseller in the US since its publication in 1944.[12] The second significant offensive took place during the recession of the early 1980s, when agreements between employers and unions were watered down amid the threat of unemployment. As noted by Rick Fantasia and Kim Voss, American unions buried their heads in the sand for a decade, refusing to recognize that employers (with the aid of the Reagan administration) had embarked on an aggressive programme to eradicate trade unionism.[13] Yet the shot across the bows in 1981, when striking air traffic controllers were fired despite their union being conservative-leaning and having called on its members to vote for Reagan, was loud and clear enough. Ever since then, employers have waged systematic campaigns to dismantle the unions with assistance from legal consultants and private militia. They have honed an effective tactic of provoking strikes and then replacing strikers with company (yellow) union members opposed to strikes, who subsequently vote to de-unionize the company. This repression

of the unions, the en masse firings of union delegates and a myriad of obstacles to setting up a union have led to a waning of the union movement, which, in turn, has contributed to a fall in US salaries in real terms over several decades and a weakening of the social security net.[14] The campaign of Wisconsin's Republican governor Scott Walker in 2011 to end the collective bargaining rights for public-employee labour unions was merely the logical continuation of this offensive and has since been copied in many other Republican states. This process of de-unionization was facilitated by the fact that the union movement is atomized in the US: there exists no collective convention, and workers' protections are defined within individual companies. In this respect, the country has become a role model for dismantling labour law, exacerbating inequality and impoverishing the workforce.

Although the eroding of union power was, historically, the first salvo in the neoliberal offensive against labour rights, we can only grasp its effectiveness and scope in light of a new – and equally important – development that took place in the 1990s. This saw the emergence of a new type of management that was orientated solely towards financial performance. It also introduced a principle of competition *between* individuals: as if undermining the unions was not enough, the objective was to go further still and unravel the collective fabric of the workplace.

. . . to the new 'war of all against all' management style

The France Télécom trial that took place from May to July 2019 at the correctional court of Paris – and which some observers perceptively saw as neoliberalism, its practices and its language being put in the dock – is a useful paradigm for understanding the workplace neoliberalization strategy as it plays out at the level of companies and their employees.[15] First, because in finding the former France Télécom CEO and several senior executives guilty of creating a toxic environment when privatizing a company that was until 2004 majority state-owned, the court, for the first time, recognized the *institutional* nature of 'moral harassment'. It demonstrated that depression and suicidal tendencies (nineteen employees committed suicide and twelve attempted to take their own lives) can result from a type of management founded upon competition and through

undermining the collective ethos as well as individual employees. But this case also exposed the sheer rapidity with which the management at France Télécom implemented the set of policies, including the 2006 NExT restructuring plan, whose aim was to get rid of 22,000 employees – 'through the door or out the window' in the words of its then CEO – in order to satisfy shareholders clamouring for dividends. It laid bare a process that is normally slower and more drawn-out; but although the practices of France Télécom's management might have been exceptional in their speed and brutality, they were perfectly standard in terms of rationale and objectives. Indeed, they were even deemed 'excellent' by the business and management world, with Didier Lombard receiving a prize for innovation in management from the Trophées du Management et de l'Innovation in 2007 and being named boss of the year by the television and radio network BFMTV in 2008.[16]

The France Télécom trial was the tip of an iceberg, highlighting and subjecting to critical scrutiny the phenomenon of this new management style (above and beyond the individuals who orchestrate it or endure its nefarious effects). This 'management by objectives and self-control', whose sole goal is to optimize corporate performance by demanding total commitment on the part of employees, was championed for the first time in 1954 by Peter Drucker, a thinker influenced as much by Schumpeter as by Hayek and Mises.[17] Whereas, under the Taylorist model of scientific management, workers were expected to follow the rules laid down by their managers as scrupulously as possible, the new management style appeals to the intelligence, creativity, autonomy and responsibility of the employee. It would, however, be extremely misguided to take at face value all the promises of self-fulfilment, as the new methods are driven just as exclusively by the bottom line. Indeed, although the new management style can legitimately be described as post-Taylorist and post-Fordist, the emphasis on personal commitment, together with the obsession with targets, performance and competition between individuals that is part and parcel of it, reflects a much broader economic shift involving the transformation of processes of production, the globalization of the markets and an economy increasingly dominated by financial services. With a 'new cognitive division of labour' on an international scale, technological innovation and intellectual property are the most important resources in terms of the financial performance of the most developed economies.[18] But shareholder

pressure has simultaneously imposed a ‘governance by numbers’ focused on measuring corporate financial performance in real time to satisfy the insistence on dividends.[19] All these factors determine the new role of managers, which is to ensure that the dictates of capital are obeyed by those doing the work, who must subscribe fully to the goals of the company. This has prompted Vincent de Gaulejac to argue that contemporary management exercises a

> power founded on personal motivation and investment, trapping employees in a paradox . . . By committing themselves, they become the principal drivers of their own domination, inveigled by their own eagerness. A large part of their mental energy is thereby harnessed by the company, which transforms it into labour in the service of profitability.[20]

A central role in this process has been played by the introduction of individual performance assessments that, coinciding with the weakening of union power and greater flexibility in the way work is organized, have undermined the collective working ethos and replaced it with a competitive climate among employees.[21] Just like the offensive against the unions, the goal of this shift in management practices is to dismantle solidarity mechanisms (cooperation and trust), forcing people to adapt to an unstable environment in which they are expected to out-perform their colleagues and adopt a bellicose mindset.

Championing self-employment and destroying job security

But this neoliberal offensive has a still more radical and ambitious objective: to eliminate the employee benefits (social security protection and workers’ rights) that emerged from the so-called Fordist compromise and replace them with self-employed arrangements where people work flexibly without those benefits. This new model, which goes by various names (Uberization, the gig economy, platform capitalism), is still far from being ubiquitous; traditional salaried employment remains the norm around the world, though perhaps temporarily, because it is the systematic target of all the labour-law reforms aimed at further eroding employees’ rights. The emergence of the ‘precariat’ – which encompasses a whole panoply of precarious new ways of working, sometimes for nothing or virtually

nothing (such as workfare and crowdsourcing) – has also made it increasingly difficult to define work in terms of social categories.[22]

This championing of entrepreneurship is reflected in contemporary political reforms and policies pursued by both the right and social democratic parties. In 1998, Blair and Schröder's Third Way working paper was already arguing: 'For the new politics to succeed it must promote a go-ahead mentality and a new entrepreneurial spirit at all levels of society . . . Modern social democrats want to transform the safety net of entitlements into a springboard to personal responsibility.' Indeed:

> Providing people with the skills and abilities to enter the workforce is not enough. The tax and benefits systems need to make sure it is in people's interests to work. A streamlined and modernised tax and benefits system is a significant component of the left's active supply-side labour market policy.[23]

Like everything relating to human behaviour, this promotion of entrepreneurship, which has become the political norm, in fact has a long history whose roots can be found in neoliberal theory. It is a normative principle of the ordoliberal school – notably in the project sketched out by Müller-Armack, Rüstow and Röpke in a social market economy, wherein the citizen (*Bürger*) is redefined as an entrepreneur, owner and saver – and also in the Austrian-American school and Mises's theory of human action, which is entirely founded on the notion that man is defined by his entrepreneurial spirit.[24] But more important still is the element that Michel Foucault recognized in 1978–79 as having revolutionary potential and 'immediate political connotations'.[25] The shift that he highlighted was the substitution by the Chicago School economist Gary Becker of the concept of 'labour power' with that of 'human capital', meaning that *homo œconomicus* mutated from a 'partner of exchange' into what Foucault terms an 'entrepreneur of himself'.[26] For the Chicago School (including Theodore Schultz and Jacob Mincer alongside Becker), human capital was bound up with the notion that all types of income, whether monetary or not (Schultz, for example, included the criterion of well-being), stem from the particular skills with which an individual is endowed and their capacity to leverage this skills capital.[27] This is an economy based on a sort of self-realization where what counts is not so much what people do as their potential for

future performance. In this respect, their personal value rests on an appreciation of their potential.

Human capital theory is thus founded on an exclusively economic conception of human action, which, in turn, underpins the normative model of entrepreneurship. If each individual is responsible for the investments they do or do not make (and therefore for both their successes and failures), it is because they are defined by the capital they possess and by the manner in which they invest it. They are constantly called upon to make the right choices, whether in terms of education, health, work or marriage. But between the original elaboration of this theory and its subsequent adoption by the major global institutions – including the International Monetary Fund, the World Bank, the Organisation for Economic Co-operation and Development and the European Union – the goalposts seem to have moved appreciably. The central target is no longer, as was the case in the 1960s, the welfare state as a whole and its application in the fields of education and health.[28] It is now the institution of salaried employment itself, together with the associated social security benefits and legal framework. More broadly, the target is the 'democratic potential' of work itself, insofar as it is a key locus for the practical experience of democracy and even the invention of new forms thereof, given the crucial role that reflection and cooperation can play in the workplace.[29] To put it another way, in the firing line is the very potential of work to nurture the alternative mindset of the commons and the radical conception of democracy that this implies. What the normative neoliberal emphasis on economic performance and competition is really trying to eradicate is the possibility of collectively constructing certain norms through the workplace – a possibility that could exist if the existing, abstract, profit-centred norms did not prevent people from questioning what constitutes productive work and what, in the current economic climate, could be deemed genuinely useful and valuable.

From entrepreneur of oneself to one's own worst enemy

This systematic assault on the collective dimension of labour ultimately menaces the psychological integrity of the worker. In a world where there can only be individual failures, the notion of social causes of suffering being excluded, the only path to success is individual self-control.

Neoliberal governmentality thus reveals itself to be inseparable from self-recrimination. It is as if this economic war cannot function without violence being directed against oneself so that individuals not only end up adopting a bellicose mindset but apply that mindset to themselves: *the entrepreneur of oneself is forced to become their own worst enemy*. To be more precise, this is true in at least three senses, which to some extent overlap. First, the championing of the individual enterprise model, which goes hand in hand with the dismantling of labour law and the social security net, runs counter to the interests of most workers. To go along with the notion of being the entrepreneur of oneself is voluntarily to embrace precariousness, and in the process to appropriate norms and values that are antithetical to one's interests. Second, to comply with the injunctions of autonomy and self-realization, an employee who submits to the entrepreneurial model ends up destructively internalizing the pressure to perform. Suffering in the workplace and suicides are the most tragic repercussions of this process of internalization, the product of a new style of management that, in demanding that employees find a way of obeying instructions devised remotely by planners, forces them to blame themselves for workplace conflicts and unworkable contradictions (for example, doing more with less, being creative and flexible without the necessary resources, cooperating while at the same time competing).[30]

It is thus, ultimately, very much in the arena of self-recrimination that the climate of aggression and social domination plays out. In Sigmund Freud's metapsychology, the superego captures this interiorization of social norms whereby individuals impose social constraints *against themselves*, giving rise to feelings of guilt whose morbid character and effects he was quick to point out, as had Friedrich Nietzsche before him. This mechanism was later deployed in Freudian readings of Marxism to account for the forms of social domination that ensure the reproduction of capitalist relations.[31] One of the most important attempts to conceptualize this subject, often associated with Adorno's notion of the authoritarian personality, was developed by the Frankfurt School from the 1930s onwards.[32] The objective was to understand an apparent aberration from the point of view of orthodox Marxism, namely the fact that many workers in the Weimar Republic subscribed to national socialism.[33] The common thread of the Frankfurt School conceptualizations is that the socialization of the individual takes place not so much in the family and in relation to the father

but directly in the sphere of society, the superego being constituted through a more direct identification with social authority. As Stéphane Haber has pointed out, this model of subjectification through the superego turns out to be very helpful for understanding the capacity of neoliberalism – understood as a 'determined project to bend society to the demands of the "market"' – to gain purchase in and activate a corner of the human psyche.[34] This model can account for the 'pathologies' that are seen in today's workplace and also how the imposition of performance targets and competition can afford a sense of self-fulfilment, employees being seduced by neoliberalism's insistence on producing 'ever more'.[35] Analysing the way the superego is harnessed in this performance culture helps us to appreciate the ambivalence of the neoliberal form of subjectification. Understanding the psychological mechanisms at play in the war of economic competition can explain, at least in part, why it is the primary victims of this battle are sometimes also its most enthusiastic foot soldiers. We should not be misled into thinking, however, that employees consent across the board to neoliberalism. Managerial constraints also prompt open conflicts, resistance and revolt, and often rejection and disinvestment. But we should always bear in mind that the war of economic competition is fought against the backdrop of values that idealize these new working-practice norms. This, in turn, means that the social battle should involve both the deconstruction or transgression of neoliberal norms and the elaboration of alternative norms and values – the challenge of the current age is to bring about a genuine 'revaluation of all values', to borrow a phrase from Nietzsche.

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1 See Margaret Thatcher Foundation, margaretthatcher.org.

2 Margaret Thatcher, *The Downing Street Years*, HarperCollins, 1993, p. 378.

3 Commission of the European Communities, 'Green Paper: Modernising Labour Law To Meet the Challenges of the 21st Century', Brussels, 22 November 2006. Report cited in Alexis Cukier, 'Le néolibéralisme contre le travail démocratique', *Contretemps*, no. 31, November 2016.

4 This is not really the same as Hobbes's *bellum omnium contra omnes* that was discussed in the introduction: the English philosopher describes a state of nature existing prior to the formation of the state that re-emerges when the state collapses, whereas the war we are talking about here presupposes the existence of a strong neoliberal state that creates the conditions for such a war and constantly nurtures it.

5 See, for example, Marie Pezé, *Ils ne mourraient pas tous mais tous étaient frappés. Journal de la consultation 'Souffrance et travail' 1997–2008*, Flammarion (Champs actuels), 2010; Costa-Gavras, *Le couperet*, KP Productions, 2005, 122 minutes; Jean-Marc Moutout, *Violence des échanges en milieu tempéré*, TS Productions, 2003, 99 minutes; Stéphane Brizé, *La loi du marché*, Arte France Cinéma, 2015, 93 minutes; Stéphane Brizé, *En guerre*, Nord-Ouest Films, 2018, 105 minutes.

6 Christophe Dejours, *Souffrance en France. La banalisation de l'injustice sociale*, Le Seuil (L'histoire immédiate), 1998, pp. 199–200.

7 See David Harvey, *A Brief History of Neoliberalism*, Oxford University Press, 2005; Gérard Duménil and Dominique Lévy, *Capital Resurgent: Roots of the Neoliberal Revolution*, trans. Derek Jeffers, Harvard University Press, 2004; Cukier, 'Le néolibéralisme contre le travail démocratique'.

8 Luc Boltanski and Ève Chiapello, *The New Spirit of Capitalism*, trans. Gregory Elliott, Verso, 2005. For such an interpretation of the birth of neoliberalism, see also the more recent work by David Hancock, *The Countercultural Logic of Neoliberalism*, Routledge, 2019.

9 See Chapter 5.

10 Thatcher, *The Downing Street Years*, p. 339.

11 On the militarization of the police, see Chapter 10.

12 See Alan Brinkley, *The End of Reform – New Deal Liberalism in Recession and War*, Vintage, 1996.

13 See Rick Fantasia and Kim Voss, *Hard Work: Remaking the American Labor Movement*, University of California Press, 2004. This book describes the battle waged by employers and the US administration against the trade unions.

14 In the United States 'from 1983 to 2016, the proportion of workers belonging to a union was virtually halved, falling from 20.1% to 10.7%. But this decline was much more marked in the private sector (16.8% to 6.4%). Union membership in the public, which is nearly six times higher, only dropped slightly (36.7% in 1983 compared to 34.4% in 2016), though in some states that have passed anti-union laws it has decreased sharply.' See Donna Kesselman and Catherine Sauviat, 'États-Unis. Les enjeux de la revitalisation syndicale face aux transformations de l'emploi et aux nouveaux mouvements sociaux', *Chronique internationale de l'IRES*, no. 160, February 2018, pp. 19–37.

15 Leslie Kaplan, 'Jour 12 – Les mots, c'est quelque chose', *La petite BAO*, 27 May 2019; Sandra Lucbert, *Personne ne sort les fusils*, Le Seuil (Fiction & Cie), 2020.

16 As Thomas Coutrot reminded us when sharing his impressions of the first day of the France Télécom trial. See Thomas Coutrot, 'Jour 1 – Procès France Télécom: "Rendre frileux les PDG?"', *La Petite BAO*, 7 May 2019.

17 Peter Drucker, *The Practice of Management*, Harper, 1954.

18 See El Mouhoub Mouhoud and Dominique Plihon, *Le savoir & la finance. Liaisons dangereuses au cœur du capitalisme contemporain*, La Découverte, 2009.

19 Alain Supiot, *Governance by Numbers: The Making of a Legal Model of Allegiance*, trans. Saskia Brown, Bloomsbury Publishing, 2017.

20 Vincent de Gaulejac, *La société malade de gestion. Idéologie gestionnaire, pouvoir managérial et harcèlement social*, Le Seuil (Points économie), 2009, p. 326.

21 Christophe Dejours, 'La psychodynamique du travail face à l'évaluation: De la critique à la proposition', *Travailler*, vol. 1, no. 25, 2011, pp. 15–27.

22 On the precariat, see Robert Castel, *La montée des incertitudes. Travail, protections, statut de l'individu*, Le Seuil (La couleur des idées), 2009. On workfare, see Maud Simonet, *Travail gratuit: La nouvelle exploitation?*, Textuel (Petite encyclopédie critique), 2018. On crowdsourcing, see Antonio A. Casilli, *Waiting for Robots: The Hired Hands of Automation*, trans. Saskia Brown, University of Chicago Press, 2025. On the problem of categorization, see Marie-Anne Dujarier, *Trouble dans le travail*, PUF, 2021.

23 Tony Blair and Gerhard Schröder, 'Europe: The Third Way/Die Neue Mitte', Friedrich Ebert Stiftung, June 1998 (fes.de).

24 On these various points, see Pierre Dardot and Christian Laval, *The New Way of the World: On Neo-Liberal Society*, trans. Gregory Elliott, Verso, 2010, Chapters 7 and 8.

25 Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, Palgrave Macmillan, 2010, esp. the lecture of 14 March 1979, p. 230.

26 Gary S. Becker, *Human Capital: A Theoretical and Empirical Analysis with Special Reference to Education*, University of Chicago Press, 1993 (1964); Foucault, *The Birth of Biopolitics*, pp. 226, 215.

27 Theodore W. Schultz, 'Capital Formation by Education', *Journal of Political Economy*, vol. 68, no. 6, December 1960, pp. 571–83; Jacob Mincer, 'Investment in Human Capital and Personal Research Income Distribution', *Journal of Political Economy*, vol. 66, no. 4, August 1958, pp. 281–302; Theodore W. Schultz, 'Investment in Human Capital', *American Economic Review*, vol. 51, no. 1, March 1961, pp. 1–17.

28 Melinda Cooper, '*In Loco Parentis*: Human Capital, Student Debt, and the Logic of Family Investment', in *Family Values: Between Neoliberalism and the New Social Conservatism*, Princeton University Press, 2017, pp. 215–56.

29 Cukier, 'Le néolibéralisme contre le travail démocratique'. See also Alexis Cukier, *Democratic Work: Radical Democracy and the Future of Labour*, trans. Alexis Cukier, Palgrave Macmillan (Marx, Engels, and Marxisms), 2023.

30 On the aetiology of suicides at work, see Christophe Dejours, 'Nouvelles formes de servitude et suicide', *Travailler*, vol. 1, no. 13, 2005, pp. 53–73; Christophe Dejours and Florence Bègue, *Suicide et travail: Que faire?*, PUF (Souffrance et théorie), 2009; Dominique Lhuilier, 'Suicides en milieu de travail', in Philippe Courtet, ed., *Suicides et tentatives de suicide*, Lavoisier (Psychiatrie), 2010, pp. 219–23. On the new management style, see Marie-Anne Dujarier, *Le management désincarné. Enquête sur les nouveaux cadres du travail*, La Découverte (Cahiers libres), 2015.

31 See especially the works of Siegfried Bernfeld, Otto Fenichel, Paul Federn and Wilhelm Reich.

32 Theodor W. Adorno, Else Frenkel-Brunswik, Daniel Levinson and Nevitt Sanford, *The Authoritarian Personality*, Verso, 2019 (1950).

33 Erich Fromm, *Arbeiter und Angestellten am Vorabend des Dritten Reiches. Eine sozialpsychologische Untersuchung*, Psychosozial-Verlag, 2019 (1980); Max Horkheimer, Erich Fromm and Herbert Marcuse, *Studien über Autorität und Familie. Forschungsberichte aus dem Institut für Sozialforschung*, zu Klampen Verlag, 2005 (1936). On the history and place of this question in the Frankfurt School, see Katia Genel, *Autorité et émancipation. Horkheimer et la Théorie critique*, Payot (Critique de la politique), 2013, ch. 2, pp. 103–98.

34 Stéphane Haber, 'Subjectivation surmoïque et psychologie du néo-libéralisme', in *Penser le néocapitalisme. Vie, capital et aliénation*, Les Prairies Ordinaires, 2013, pp. 145–80.

35 Ibid., p. 161.

10

Governing Against the People

The civil war we have been talking about throughout this book is not a rhetorical exaggeration – it is very real. One of its most obvious features is the intensity of the repression, by the police and the courts, of those who dare to disrupt the social order and challenge the powers that be, and not only in countries governed by populist autocrats or in totalitarian states like China. Legal provisions, police powers and technology deployed in the war on terror or armed insurrections are increasingly being used to maintain law and order (a term that has taken on a very martial tone in recent years). But what connections should we make between this increasing global tendency towards repression and the neoliberal world order? In our analyses of neoliberal governmentality, we have followed Foucault's lead in emphasizing the many ways in which people's behaviour is deliberately steered by professional and social structures, but we have so far paid less attention to the direct forms of repression that, as neoliberalism has evolved, have become ever more widespread and forceful. As we stressed in the introduction, in interpreting the developments of the last four or five decades, the civil war model cannot be dismissed on the grounds that people are essentially being guided by social and professional norms, without there being any direct violence involved. For what characterizes this period is *also* the use of direct physical violence against citizens, who are seen not only as criminals under the law but as anarchists or indeed terrorists – in short, as enemies of the fundamental laws of the market order. Conferring enemy status on opponents and troublemakers is the salient

characteristic of the current juncture of political history, as amply demonstrated by the crackdown on the *gilets jaunes* movement in France in 2018–19. This brutal repression of demonstrations and protests cannot be divorced from the broader context. The rejection of social compromises, the gradual suppression of avenues for negotiation and the unilateral imposition of socially regressive laws have given rise to a new political configuration in which crackdowns by forces of law and order against protesters appear to signal a return to the past and the worst kinds of anti-worker violence witnessed in the nineteenth century.[1] The war between opponents of the market order and the state that enforces it has gradually led to a battle waged by the neoliberal state against anything that might resist that order, resulting in a war prosecuted by the state against its people.[2]

A new strategic rationale

We owe to Michel Foucault the idea that the liberal state reached a 'security pact' with society that shaped the classic form of sovereignty and the legal system associated with it.[3] The security promised to the population has been used to justify exceptional interventions by the state, including those that lie outside the framework of the law. The primacy accorded to security in a sovereign state has thus resulted in a growing number of such exceptions in the name of protecting society. The state increasingly acts outside the law, not in the context of suspending the usual legal framework in the sense of Schmitt's decisionism, but to obey the logic of protecting the population against disruptive events. Marie Goupy offers the following commentary on Foucault's analysis:

> As interpreted by Foucault in the liberal state, exceptional interventions do not involve the suspension of the law or the brutal assertion of the power of sovereignty. Rather, they illustrate a very different mode of exercising power that enables us to understand why what we usually call a state of exception in the current age encompasses a wide variety of phenomena: the introduction of the familiar emergency legislation (state of emergency, USA Patriot Act), the passing of further counter-terrorism laws, and the use of surveillance technologies by the security services within the context of counter-terrorism operations.[4]

Although the connection established between the insurance apparatus of the welfare state and the repression of terrorism under the umbrella of the 'liberal state' is well worth exploring, it seems clear enough at the present

time that this strategic security rationale has undergone a significant mutation since neoliberalism reached maturity. Foucault never found time to analyse the originality of the neoliberal state, which, admittedly, has retained its insurance-and-compensation apparatus but more specifically obeys a new rationale of governing the population which involves making it responsible for its own social security protection by reducing the scope of state aid as much as possible.[5] To achieve this (and although it has to continue to provide a bare minimum of protection due to the tenacious security pact), it is busily attacking the protection mechanisms established during an earlier phase of nation-building. The neoliberal state does not want to (and cannot) offer the same security guarantees as a social-liberal state, which would lead to an increase in social expenditure that it is not willing to entertain. It is therefore militating *against* the liberal state and its security pact through social policies that are deliberately geared towards *insecurity*. This unleashing of market logic against social protection has in recent decades provoked well-documented social ills. Given that strengthening the welfare state and promoting greater social equality are excluded as contrary to its own logic, the only option open to such a state is to expand the role of the police and the penal system. Therein lies the contradiction of neoliberal states: they must continue protecting the population while, at the same time, undermining its security by reducing the social security net. It is this dual imperative that gives rise to the specific type of violence associated with these states, the analysis of which needs to go beyond abstract discussions about the legitimacy of state violence. Foucault's notion of the security pact will only take us so far in understanding the situation we currently find ourselves in. More pertinent are the *On the Punitive Society* lectures he gave at the Collège de France in 1972 and 1973, which used war as a lens through which to examine state strategies.[6] This approach no longer describes exceptional events taking place within the framework of a security pact between the state and the population, but proposes instead a permanent and polymorphous enemy.

Genesis and contours of the homeland war

The contemporary reassertion of state sovereignty signals neither a return to absolutism nor a rejection of neoliberalism, but is, rather, a response to

present-day necessities. The new form of sovereignty is concomitant with the war on home soil that the state must prosecute to impose the neoliberal counterrevolution on a reticent (or downright hostile) population. In the new strategic rationale, it is the logical bridge between a homeland war and governance based on the principle of competition. State violence against the population is, admittedly, not a new phenomenon – indeed, it is synonymous with the history of the state, whatever its apologists might claim – but it does not always obey the same logic. The paradox of this new homeland-war mindset lies in the fact that it is waged against an enemy that is not organized and does not seek to seize power, through armed violence or otherwise. (It would, in any case, be incapable of doing so, having been rendered so impotent by the undermining of the collective ethos in the workplace.) Although at no time since the nineteenth century has the potential for a revolution of the social order seemed so unlikely, never before have police powers been as extensive as today. We need look no further than the examples of the British, American and French police, which have been transformed into a sort of unprecedented interior army of occupation to deal with street disturbances, in a manner reminiscent of Northern Ireland or the Occupied Palestinian Territories. To speak of *criminalizing* collective action is to fall well short of the mark. What we are dealing with here is a logic of war, increasingly buttressed by legislation, that transforms opponents into enemies of the social order. There is a performative dimension to this process, which casts certain sections of the population as traitors to the political community bent on wrecking the country's potential and competitiveness. For these practices, in some sense, *manufacture the enemy*. Under heightened surveillance by an increasingly militarized police force and subject to constant stop-and-search practices, the enemy status of these opposition groups is continually reinforced, dragging some into a vicious spiral where they identify the police as their sole political target, thereby implicitly accepting their role.

This manufacturing of the enemy within has been facilitated by the sometimes desperate actions taken by sections of the population who are bearing the brunt of neoliberal policies. By way of illustration, we can cite the era when Thatcher was implementing these policies in an especially brutal way in Britain. The sequence of events speaks volumes. She soon found herself confronted with two major challenges: in the early 1980s there were a series of inner-city riots in which large numbers of black

people took part; and then the miners, in one of the biggest industrial actions the country had seen, went out on strike after the National Coal Board announced pit closures that would result in a further 20,000 job losses. These events afforded the police an opportunity to hone new techniques, while the government set new legal precedents in terms of criminalizing industrial action. Amid this crackdown, no effort was made to understand the root causes of the riots, which the Conservatives blithely put down to a lack of moral scruples, the existence of the welfare state and immigration. Among both the rioters and the strikers, people were arrested without charges being brought, stop and search was deployed extensively, dogs were used and mounted police charged protesters. A more offensive police force also deployed new weapons whose use against the civilian population had hitherto been banned (water cannon, tear gas, rubber bullets). But this was not all: suspected ringleaders had their telephones bugged; there were suspicious burglaries; and the automated surveillance technologies used by the police heralded the shape of things to come. The figures for the crackdown on the miners in 1984–85 are sobering: out of 165,000 strikers, 11,313 were arrested, 7,000 injured, 5,653 charged, 960 sacked, 200 jailed and 11 killed. In the process, the legal arsenal was reinforced: even the most violent police actions were legitimized, while many miners received heavy prison sentences. The magnitude of this step change becomes apparent when one considers that not a single person was sentenced to prison during the General Strike of 1926. In the wake of these events, the right to strike and demonstrate was curtailed by law and the police were given increased powers. Determined to remove responsibility for the police force from local authorities (many of them under Labour control), Thatcher centralized the command of the police, placing the force directly under the government’s authority. In this way, the police became the armed branch of the executive. Young black people and Asians, along with strikers, found themselves subject to counterterrorism techniques deployed in other theatres of operations, not least former British colonies. Legally sanctioned counterterrorism measures designed to deal with the militia in Northern Ireland were rapidly applied to young rioters in working-class neighbourhoods.

The British model has had its emulators – almost all police forces in Europe and indeed around the world have also upgraded their equipment and their intervention techniques, which have increasingly come to

resemble military operations. The same degree of violence was witnessed in interventions by the Italian police against alter-globalist demonstrators and the black blocs protesting in Genoa against the G8 summit on 19–22 July 2001. The crackdown left one person dead and hundreds injured; what shocked people most and left a lasting memory was the police use of brutality and torture against campaigners who had occupied a school and turned it into the nerve centre of the alter-globalist movement. Far from being an aberration, Genoa was the event that laid bare the transposing of the terror tactics that had been used to quash challenges to the neoliberal order since the turn of the millennium and the confrontations in Seattle in November 1999. The same tactics have been applied to stymie experiments in alternative lifestyles and modes of production. During the seemingly disproportionate operation to expel the anti-capitalist inhabitants of the proposed Notre-Dame-des-Landes urban development zone in 2018, footage shot by gendarmerie cameramen dominated media coverage, this being just one aspect of the transformation of the site into a genuine *war zone*, out of bounds to journalists and where the normal rule of law did not apply. A similar unleashing of police violence was also to be observed against the Chile despertó movement that began on 18 October 2019. In January of the following year, the Instituto Nacional de Derechos Humanos (INDH), a state human rights watchdog, released the following figures: 139 women were raped (including 14 teenagers), 300 people sustained eye injuries and 7 lost their sight altogether. These numbers are an underestimate, as many people were too scared to come forward: during the three-month crackdown over 20,000 were detained, more than 3,500 injured (400 in the eyes) and some 30 people lost their lives as a direct or indirect consequence.

One of the most important aspects of this logic of war that has been implemented in the streets of many countries around the world since the 1980s is the ‘militarizing’ of the police – the term used in the specialist literature to denote the creation of a new police force specifically designed to control crowds along military lines, that is, a centrally commanded homeland army whose function is to defeat protesters on the ground.[7] This militarization of the police goes hand in hand with the legitimization of police violence, as well as efforts to abolish precisely those legal rights that would allow citizens to challenge it. A draft global security law presented to the French parliament in 2020 and passed the following year, which sought

to prohibit the filming of police violence and expand the use of drones and surveillance cameras, was merely the latest in a long line of French laws curtailing civil liberties.

Police units are changing both in appearance and in their modes of intervention. Even when policing pacifist demonstrations, they don *Robocop*-style outfits designed for confrontation, they use military vehicles and they possess supposedly non-lethal weapons (which can nevertheless seriously injure and even kill), such as the blast balls and sting-ball grenades that have been used indiscriminately against demonstrators in France. They also employ helicopters and drones to observe demonstrations as if they were monitoring enemy troops.[8] These techniques for maintaining law and order are not used to protect or keep demonstrators back from zones of confrontation. Instead, the aim is to control them in a climate of generalized suspicion. Demonstrators may be screened when joining or leaving a demonstration (in France, they may even be body-searched beforehand) or prevented from reaching the venue (by being arbitrarily arrested and then released without charge). The police may break up the demonstration (including by kettling), arrest violent demonstrators at the heart of a crowd (at the risk of striking and injuring peaceful demonstrators during the police charge) and employ various methods of intimidation, especially against journalists (freelance or otherwise) by confiscating their equipment and being abusive.[9] The tactics do not aim to protect the constitutional right to protest – on the contrary, the point is to deter as many people as possible from demonstrating by using disproportionate force against generally peaceful citizens. Since the widespread 2016 demonstrations against a new labour law (which among other things made it easier to make employees redundant), when, for the first time, demonstrators were confined to a restricted area and unable to negotiate a route for the demonstration with the police prefecture (as had been the case until then), every effort has been made in France to transform the atmosphere of protests and turn them into a risky proposition. The doctrine no longer involves facilitating the demonstration but instead aims to take purported or actual troublemakers into custody. Priority is given to repression, which has become the police’s sole raison d’être. It was first seen in the interventions against rioting linked to the increasing impoverishment and precarity of many people living in working-class neighbourhoods. The tactics deployed in cracking down on the revolt in

disadvantaged suburbs across France in October and November 2005 were reminiscent of the sinister tactics used by French police officers and soldiers during the Algerian War of Independence (1954–62). The objective was to terrorize the inhabitants of those neighbourhoods, including by flying deafening helicopters over buildings throughout the night with their searchlights blazing. Once again, the government was resurrecting, against the enemy within, old colonial tactics that it has subsequently redeployed in protests over neoliberal reforms.[10]

The militarization of police units has also been accompanied by a far-right political radicalization among members of the force that has not received the attention it deserves. Existing in their own little bubble in their quarters and isolated from the rest of society, they can feel increasing frustration with their de facto enemy, resulting in dangerous and violent acts that are often covered up by senior officers. On top of this, there is a tendency, when they act as a politicized force against opponents qualified as terrorists or anarchists, for these militarized units to operate like militias. This was evident in Trump's attitude to the Black Lives Matter movement and US anti-fascist protesters: the president had no qualms about sending in the army and encouraging armed far-right militia in Democrat-run cities to help restore law and order. The French government was hardly more reticent in its brutal approach to the *gilets jaunes* movement, who were seen as political enemies to be vanquished. The Paris prefect of police Didier Lallement admitted as much when, during a demonstration on 16 November 2019, he announced to a *gilets jaunes* representation: 'We are not on the same side.'

Cracking down on the *gilets jaunes*

The crackdown against the *gilets jaunes* was exceptionally violent. This violence was a response to the egalitarian demands of this movement over the course of many months, including an increase in salaries and minimum welfare benefits, direct democracy and a reduction in indirect taxation, which hits the poorest the hardest. Official Interior Ministry figures released in March 2019 indicated that blast balls had been used 12,122 times, instant tear-gas grenades 1,428 times and sting-ball grenades 4,942 times.[11] Research by the freelance journalist David Dufresne revealed 500 reports of

police violence, 1 death, 206 people wounded in the head, 22 who had lost an eye and 5 who had lost hands.[12] As early as February 2019, there was widespread condemnation of this ultra-violent crackdown. A United Nations group of experts expressed concern that the 'right to protest in France has been disproportionately curtailed during the recent "gilets jaunes" protests'.

Not only did the justice system seek to cover up illegal police actions, but the courts took a hard line against some of the protesters. The public prosecutor's office demanded extremely heavy sentences, often on the basis of arrest forms rapidly filled out by the police. People were held in custody and charged under the law introduced to combat organized violence by the Sarkozy administration in March 2010, which allows suspects to be charged with 'being part of a group with the deliberate intention of planning violence against individuals or damaging property'. It was initially designed to respond to acts of delinquency in disadvantaged suburbs. It was also in this repressive climate in 2019 that, on the initiative of the right in the French Senate, a bill on maintaining law and order during demonstrations (dubbed the anti-troublemaker law) was passed that sought to make it easier for the authorities to ban demonstrations and introduced heavier penalties for those charged with committing violent acts.

As justification for this violent repression, a concerted effort was made to denigrate and stigmatize the *gilets jaunes* – a veritable monster was created in the public imagination, thanks not least to its zealous perpetuation by the twenty-four-hour television news channels throughout the protests. Official representatives and mainstream journalists conveyed the most negative image imaginable: anti-environmental, antisemitic xenophobes with far-right and extreme-left leanings all at the same time. In time-honoured fashion, fear was whipped up through fake news, with the Interior Ministry regularly insinuating that thousands of violent troublemakers were going to wreak havoc in Paris and Macron implying that foreign powers (including Putin's Russia and Italy under Salvini) were behind the revolt. As for the government's management of the police riposte, it was a curious blend of laissez-faire (in response to the damaging of property) and violent interventions, as if designed to provoke a political panic.

The *gilets jaunes* movement and the crackdown it prompted are a good illustration of the problems faced by neoliberal governments. How are they to manage the population's anger and its demands for social justice? Police

repression is not the exclusive preserve of so-called illiberal regimes; it is also employed by governments who claim to be resolutely opposed to such regimes in the name of liberal democracy. This is true not just of France – the heavy sentences meted out to Catalan independence leaders by the Spanish courts are another example. We may not be witnessing the return of fascism in the classic sense of the word, but we are seeing the application of a homeland-war mentality that is calling into question individual and collective freedoms.

The civil war rationale

The ‘terrorist threat’ is invariably invoked to justify the boosting of police powers and resources, not least when to comes to constraining the scope for demonstrating.[13] But we need to go further back: this ubiquitous homeland-war mentality among neoliberal governments owes much to a historical circumstance that does not, at first sight, appear to be directly relevant to the economic and social priorities associated with neoliberal domination. The Islamic Revolution in Iran in 1979 fired the starting gun for global jihadism, which had the West in its sights for supposedly seeking to eradicate the Islamic faith. The response of the West (the ‘global war on terror’, as George W. Bush called it), by enshrining in law and the powers of the police the paradigm of war, has seen governments using new counterterrorism methods against its opponents. The attacks on the World Trade Center on 11 September 2001 marked a major turning point. Immediately afterwards, the US administration revised its doctrine in terms of legislation and repressive practices, and other Western countries soon followed suit. Since then, this war on terror has been used not only to justify foreign interventions, including the invasion of Iraq in 2003, but also significant changes in the law and the use of new methods in the name of national security and protecting the population: targeted assassinations, kidnappings and disappearances, the torture of prisoners, detention without trial, and extensive surveillance of telephone and digital communications. Such measures have progressively been legalized by the states that employ them, not least the United States. The Patriot Act promulgated by Bush in 2001 set the template for the next two decades. Islamist terrorism has not only changed the war doctrine but has also altered perceptions. This war on

terror no longer involves the armies of two countries battling it out – it is a war being waged against dangerous minorities who have infiltrated the population and who need to be identified and neutralized before they can act. The war against terrorism is conceived as a global response to a borderless conflict orchestrated by jihadists against civilian populations. But it also affects members of the general public, by curtailing their freedom and subjecting them to widespread surveillance – achieving, in a sense, the terrorists' goals through the government reactions that they provoke. It is in the climate of fear generated by terrorist attacks that the governance of the people becomes increasingly centred on security. In this respect, we can legitimately speak, to borrow Bernard E. Harcourt's term, of a *new governing paradigm*.[14] The war on terror is not the continuation of policy with other means, in Carl von Clausewitz's famous phrase – it was completely political from the outset and needs to be analysed in this light.

It is important to understand how and why this model of political war, which originally emerged and evolved within the framework of the global combat against terrorism, came to be applied to all forms of protest and contestation and how and why entire populations came to find themselves under surveillance. For Harcourt, this new governing paradigm is a 'counterrevolution without revolution' – a 'counterinsurgency warfare model of politics'.[15] It has three components: identifying and isolating the dangerous minority through extensive surveillance in order to distinguish between friend and foe; 'eradicating' this minority by every legal and soon-to-be legal means; and doing everything possible, ideologically or judicially, to gain the allegiance of the general population.[16]

This counterinsurgency-warfare paradigm was originally theorized and implemented by various colonial armies. In particular, the French Army applied it on a large scale during the colonial wars in Indochina and Algeria and then exported it to dictatorships in many countries during the Cold War (especially in Latin America) via training schools in anti-guerrilla tactics run by French military advisors. A surgical model of warfare, which targets small clusters of rebel combatants dispersed amid the population and through the territory, was well suited to many dictatorships trying to track down militants from left-wing organizations who were perceived as threats to the social and political order. This unconventional form of war was honed by the US Army in combating, directly or indirectly, guerrilla fighters and later the drug cartels. Techniques of this type were deployed on

a larger scale still during interventions by the US and its allies in Iraq and Afghanistan, before being re-imported for domestic use. Such methods were considerably upgraded in the early 2000s with the help of digital surveillance and drones.

The counterinsurgency paradigm has in the process become the essence of law-and-order policies on the homeland front. There is, in fact, nothing new about the political dimension of maintaining law and order. The modern police force was political from the outset: even in the nineteenth century, its objective was to quash insurrections as much as to punish crime. In the early twentieth century, this politicized police force took over the role of repressing social contestation from the army; even as the maintaining of law and order was demilitarized, the police became more militarized with the emergence of mobile gendarmerie units and the Compagnies Républicaines de Sécurité (CRS) in France. If the French were initially in the vanguard when it came to restructuring the police force, the British caught up in the 1980s under Thatcher, as we saw earlier in our discussion of the response to the inner-city riots and strikes of that decade. But the war on terror in the early twenty-first century gave fresh and decisive impetus to counterinsurgency operations, not least by stepping up the use of technology to monitor the population. As Harcourt observes, a central part of the government's strategy is to 'obtain total information', an undertaking in which it is assisted by citizens sharing personal data that is exploited (with the passive consent of much of the population) by the megacompanies that run social media platforms.[17] In exploiting the latest digital surveillance tools, such as facial recognition, predictive policing and the ability to monitor social media constantly, the police have become technologically savvy. In this new strategic configuration, the governing paradigm is distinctly different and no combination of paternalism, discipline or competition-based neoliberal governmentality can properly account for it. This is brutal sovereignty, whose violence is commensurate with the (real or imagined) violence of the political enemy against whom the state is at war. The contours of this enemy are sufficiently elastic to include all those who have not unconditionally endorsed the prevailing order and the means used to defend it. There will always be commentators at the ready to invent accomplices of the enemy, whether it be campaigners, journalists, academics, unions or left-wing parties. A case in point is the stigmatizing of so-called Islamo-leftists in France – a category sufficiently broad to include

any critic of the homeland war being waged against people from working-class immigrant backgrounds. Terrorism is not a phenomenon that has been completely invented to justify this; unfortunately, it does indeed exist. But its presence has afforded this warfare mentality an opportunity to seep into every corner of society and politics.

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1 See Olivier Fillieule and Fabien Jobard, *Politiques du désordre. La police des manifestations en France*, Le Seuil, 2020, p. 11.

2 To quote Foucault: 'One should be able to study the daily exercise of power as a civil war: to exercise power is to conduct civil war in a certain way, and it ought to be possible to analyze all these instruments, tactics, and alliances that we can identify in terms of civil war.' He added, referring to the early nineteenth century: 'We are in the midst of social war, which is not the war of all against all, but the war of rich against poor, of owners against those who have nothing, of bosses against proletarians.' Michel Foucault, *On the Punitive Society: Lectures at the Collège de France 1972–1973*, trans. Graham Burchell, Palgrave Macmillan, 2015, pp. 32, 22.

3 See Michel Foucault, *Security, Territory, Population*: *Lectures at the Collège de France*, trans. Graham Burchell, Palgrave Macmillan, 2007.

4 Marie Goupy, 'L'État d'exception, une catégorie d'analyse utile ? Une réflexion sur le succès de la notion d'état d'exception à l'ombre de la pensée de Michel Foucault', *Revue interdisciplinaire d'études juridiques*, vol. 79, no. 2, 2017, pp. 97–111.

5 This was much in evidence during the pandemic in 2020–21.

6 Foucault, *On the Punitive Society*.

7 See Stuart Hall, Charles Critcher, Tony Jefferson, John Clarke and Brian Roberts, *Policing the Crisis: Mugging, the State and Law and Order*, Macmillan, 2013 (1978).

8 The 'National Guidelines for Maintaining Law and Order' published by the French Interior Ministry in September 2020 contains the following passage, which requires no further comment: 'Mastery of the third dimension is essential to maintaining law and order in the present day. The deployment of aerial resources (helicopters, drones) needs to be reinforced and expanded, with particular attention being paid to optical devices and capacities for relaying footage in real time whose use is covered by appropriate legislation. These resources are useful both in terms of conducting operations and identifying troublemakers.' French Ministry of the Interior, 'Schéma national du maintien de l'ordre', 16 September 2020, p. 27.

9 There is no legal basis for kettling, which involves cordoning off a demonstration and containing demonstrators within a limited area, sometimes for hours, with the air full of tear gas.

10 Tony Jefferson, 'Policing the Riots: From Bristol and Brixton to Tottenham, via Toxteth, Handsworth', *Criminal Justice Matters*, vol. 87, no.1, March 2012, pp. 8–9.

11 The use of dangerous weapons is a distinctive feature of France's approach to maintaining law and order. It is the only European country that uses explosive munitions in its policing, among them GLI-F4 instant tear-gas grenades, which have the potential to injure and mutilate, and blast balls, as we've already seen. The use of these weapons has been condemned by the Council of Europe and by former UN high commissioner for human rights Michelle Bachelet.

12 David Dufresne, 'Allô Place Beauvau: Que fait (vraiment) la police des polices? *Mediapart*, 12 June 2020.

13 'Le maintien de l'ordre au regard des règles de déontologie', Défenseur des Droits (independent government human rights body), December 2017.

14 Bernard E. Harcourt, *The Counterrevolution – How Our Government Went to War against Its Own Citizens*, Basic Books, 2018, p. 11.

15 Ibid.

16 Ibid., p. 8.
17 Ibid., p. 60.

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The Law As a Neoliberal War Machine

The law is never merely a veil draped over the brute reality of expanding markets and the domination of capital. It has its own inherent effectiveness and serves the interests of the ruling classes all the better because it performs a normative rather than an overtly ideological function for the state. The history of modern nations would be incomprehensible if we overlooked the fact that the domination they have exercised over their people has always assumed a legal form. Even colonization was legal. Totalitarian and authoritarian regimes are always careful to ensure that their violations of fundamental rights and their political crimes are rubber-stamped by the courts (and compliant judges).

Neoliberalism by no means disdains the law. On the contrary, ever since its inception, its main currents have set themselves apart from laissez-faire naturalism by stressing the need for an appropriate legal order to ensure the proper functioning of the market economy. As we have seen, neoliberals believe that a set of key principles enshrined in the constitution should serve as a framework for individual endeavour, the latter being regulated solely by an evolving body of law and court rulings pertaining to transactions between individuals.[1] This judicial approach has a strongly depoliticizing effect. Part and parcel of the very idea of a market economy in which competition must be regulated, as in the writings of Hayek, in a fair and undistorted manner, such an approach would appear, in principle, to require a strictly impartial judiciary, free from corruption and political bias, based on a highly idealized model of common law. This same ideal is championed

by the major international organizations engaged in promoting a legal order conducive to the market economy, the World Bank and the International Monetary Fund being the foremost examples. How, then, do we explain that, in countries that still claim to be democratic, this ideal of an impartial legal order is so overtly at odds with the highly political legal interventionism we see in the war against the enemy within and its various manifestations? The answer is that the law and judicial practice are an integral part of the neoliberal warfare strategy. The war is not only (and indeed not even) a military affair – it permeates every domain and every institution, dominating the discourse. It is eminently social, in that it structures power relations and shapes not only the forms of repression employed by the governing class but also the forms of resistance and revolt adopted by the governed. Law is at once a battleground and a weapon of war.

This legal-warfare strategy has two components that correspond to different geopolitical situations: the establishment of derogations from common law in the name of combating terrorism; and judicial interventionism in the political sphere targeting the political enemies of neoliberalism. France has gone down the first route, whereas Brazil is a perfect illustration of the second.

State of emergency and rule of law

Following the attack on worshippers in a church in Nice in October 2020, Les Républicains (LR) Member of Parliament for Alpes-Maritimes Éric Ciotti demanded a ‘change in the law to eradicate the Islamists’: ‘The legal framework used by some to excuse our current impotence is no longer fit for the purpose of conducting this war.’ He added: ‘The precautionary principle must be made to work in favour of society. We need to put an end to these spurious defences based on civil liberties, which merely serve to defend the terrorists and to pose a threat to our society.’[2] In the wake of every terrorist attack, there is a chorus of such calls. The clamour for exceptional measures to be taken has become the norm. After the terrorist attacks in France in November 2015 and the declaration of a state of emergency, which officially derogated from the European Convention on Human Rights, measures were taken to prevent judicial oversight and

reinforce the powers of the police and prefectures. On the basis of mere suspicion, the police were legally authorized to search vehicles and premises, block off roads, establish security zones, electronically tag suspects and monitor communications. Almost immediately, these provisions were used for purposes other than combating Islamist terrorism, including at the environmental demonstrations during the COP21 climate summit at the end of November 2015. They remained in force for two years until December 2017, when the government passed the homeland and counterterrorism bill (known as the SILT law). This incorporated most of these powers into criminal law, thereby transferring prerogatives of the judiciary to the executive. The police and prefectures have also used the SILT law to limit freedom of expression and the right to protest in situations where the terrorist threat was absent. As we saw in the previous chapter, the crackdown on the *gilets jaunes* demonstrated that any kind of protest can be targeted by these (now normal) exceptional measures, including the criminalizing of the *alleged intention* to commit a criminal act.

This is a widespread development, as documented in a 2017 Amnesty International report on fourteen European countries, which begins: ‘In a number of states, emergency measures that are supposed to be temporary have become embedded in ordinary criminal law. Powers intended to be exceptional are appearing more and more as *permanent* features of national law.’[3] The result is that these measures have ‘eroded the rule of law, enhanced executive powers, peeled away judicial controls, restricted freedom of expression and exposed everyone to government surveillance’. Moreover, they have ‘had a disproportionate and profoundly negative impact, particularly on Muslims, foreign nationals or people perceived to be Muslim or foreign’. These measures, which are similar internationally, create police states whose priority is the constant surveillance of citizens, to the detriment of their fundamental rights. Historically, the rule of law has stood in opposition to a police state that exercises its powers at the behest of a state administration. More precisely, the rule of law has been developed on a foundation of higher values to which the state is held, particularly those enshrined in the constitution. It follows that the distinction between a police state and a state bound by the rule of law is not a question of two different political systems but of the relationship that the state entertains towards the law: is it or is it not constrained by a body of law that limits it own powers (traditionally by according separate powers to the executive

and the judiciary)? In the present age, it is not: today, laws are being passed in a knee-jerk manner and their sponsors care nothing for their compatibility or otherwise with the constitution. As Mireille Delmas-Marty has observed, ours is now a ‘society of suspicion’ in which purported danger is the primary criterion when it comes to maintaining law and order:

> The society of suspicion has blurred the distinction between criminal and administrative law: while the former has become preventive and predictive, the latter (in principle preventive) has become punitive and repressive. One domain has encroached on the other, compromising judicial oversight in favour of the executive.[4]

This perverse redefining of the rule of law is nefariously undermining its very principles. As the former French prime minister Manuel Valls declared: ‘Enshrining the state of emergency in the constitution means that it must be applied within the framework of the law. This is the very definition, and an essential one, of the rule of law.’[5] Understood in this way, the rule of law is no longer about protecting the citizen against arbitrary state abuses – it is solely a question of form (as opposed to content). Even the most repressive measure is deemed legitimate once it becomes legal. This is a well-worn argument that has reversed many hard-won freedoms: the law may legitimately constrict individual freedom on the grounds that security is the precondition of civil liberties. This blurring of the distinction between the rule of law and the police state (which goes hand in hand with the confusion of security and safety) means that the subordination of legislation to fundamental rights is no longer observed. What takes precedence over all other legal safeguards is the preventive maintaining of law and order.

We should not be taken in by the notion that this is simply a suspension of the normal legal order – an exceptional state of affairs that in no way calls into question the rule of law. What we are witnessing is a transformation of the governing model, which is now centred on security and is overlaying an imposing body of repressive legislation on fundamental constitutional rights. As Marie Goupy has pointed out, it makes little sense to talk of a ‘permanent state of exception’, to use the oxymoron coined by Giorgio Agamben.[6] It is not the legal order that has been suspended; it is fundamental norms that have been transformed by the continuous extension of the derogations permitted under the state of emergency and their incorporation into criminal law. France under Macron

is emblematic in this respect, having seen an endless flurry of new laws and regulations. Every time there is a terrorist attack, a tragedy or a sensational crime, a law or decree is dreamt up on the fly, which has created a veritable hodgepodge of legislation lacking any overall coherence. The war on terror is used to justify this law-making frenzy, which, in turn, has afforded the state new weapons with which to repress social contestation. But neoliberalism's civil war has generated many other enemies besides Islamist terrorists. Foucault clearly demonstrated how the law and penal institutions have long functioned to convert the figure of the criminal into the 'social enemy'.[7] Neoliberalism is currently making strategic use of the legal field to deal with the political enemy that it has itself produced, including in so-called peripheral countries.

Weaponizing the law against neoliberalism's enemies

To impose itself, neoliberalism has had such extensive recourse to the law that some authors have dubbed its approach 'lawfare'. Orde Kittrie defines this as the strategic use of the law to produce effects similar to those traditionally sought through conventional military means, motivated by the desire to weaken or destroy an adversary.[8] On the domestic political front, lawfare is a legal strategy that seemingly complies with constitutional principles and is ostensibly designed to protect citizens against criminal acts, but which in fact has political aims, notably the neutralizing and elimination of proven or suspected enemies of the neoliberal order. We are indebted to the lawyers of Luiz Inácio Lula da Silva in Brazil, and to Rafael Valim in particular, for using the concept of lawfare as a tool to analyse how the law has been a battleground for the political combat to ensure neoliberal domination.[9]

In certain countries, Brazil being perhaps the most illustrative case, legal action has replaced the kind of military operations that overthrew democratic civilian governments in the 1960s and 1970s. Costly both financially and politically, such interventions to disrupt or reject the democratic process become unnecessary if the same political and strategic ends can be achieved by legal means. If the goal is to disrupt a democratic election (the showcase for liberalism), legal action can be used to disqualify potential candidates, oust incumbents or restrict the electorate's scope for

expressing a plurality of points of view. These actions are a means of averting the political risk of so-called popular sovereignty, especially at times when the vested interests of the ruling class are at stake.

It is above all in Latin America that we see this political lawfare strategy at work. There are no doubt geopolitical reasons for this, not least the fact that ever since the nineteenth century the United States has seen the region as key to its national interests. But there is another reason: the development of neoliberalism in Latin America, after its introduction by openly violent means, has coincided with the restoration of democratic systems and the creation of institutions to safeguard their constitutions. Any return to overtly dictatorial regimes would be perilous, as it would lay bare the anti-democratic nature of neoliberalism. The war against social contestation must therefore be pursued for as long as possible by means other than dictatorships. As we have already seen, this war has assumed extensive cultural, media and digital dimensions. The legal aspect has evolved thanks to a judiciary that only too willingly considers itself to be the final arbiter of the public good and has seen its scope for action and its authority much boosted in recent decades. The legal troubles of Lula da Silva are a textbook case, to which we will return later.

Repurposing the concept of lawfare

The term lawfare appeared for the first time in 1975 in an article by John Carlson and Neville Yeomans, where it was used to describe a Western legal system: ‘Lawfare replaces warfare and the duel is with words rather than swords.’[10] In the wake of 9/11, it was picked up by the neoconservatives and used in American military circles, where it was associated with constraints on the actions of soldiers during operations. International law, and particularly the law of war governing conduct in armed conflicts, was criticized as a legalistic interference in the United States’ military activities.

This antagonistic line was defended in particular by the air force general Charles J. Dunlap Jr in a 2001 essay that opened with the question: ‘Is lawfare turning warfare into unfair?’[11] According to the US army and experts in international law, the answer is yes: international norms are endangering the security of the US, especially after 9/11, by enabling weaker military enemies to constrain American military hegemony. This

strategy of the weak involves using the values upheld by the United States (human rights and the rule of law) *against* the country's national interest. According to Dunlap, American military power was being curbed by belligerents invoking for purely tactical reasons values that they did not themselves share.[12]

If the law is the weapon of the weak, why should the strong not exploit it too? Why would the US not seize upon this weapon to achieve its own operational goals? The concept of lawfare was thus turned inside out in the 2000s, becoming part of a new strategy aimed at neutralizing or eliminating the enemy – not on the military battlefield, but in the field of law. Lawfare morphed from being an obstacle to US military hegemony into a useful strategic resource for preserving that hegemony.

A new constitutionalism in the service of neoliberalism

The neoliberal renewal in Latin America has occurred with the consent of Washington and taken the form of a series of economic and political reforms conducted in the name of 'good governance', as defined by international institutions such as the World Bank and the IMF. There has also been a legal and institutional dimension to structural adjustment programmes and the loan conditions for developing countries in the Global South. The setting up of independent courts, the consolidation of democratic representative institutions and in particular the establishment of the rule of law and a modernized judiciary were among the reforms imposed by international institutions. This incontestably reinforced the notion that the economic rules governing globalization are indissociable from the establishment of liberal and democratic political systems; and international financial institutions have indeed invested heavily in establishing such norms and institutions. In 2006, 52 per cent of loans granted went towards financing human development projects and legal and institutional reforms.[13] These measures were aimed at upholding fundamental rights and facilitating access to legal assistance, as well as providing professional training and tightening judicial oversight of other state institutions. There were several strategic objectives in play: a more efficient and independent judiciary, the boosting of its capacity to provide a framework for political decision-making and improved access for citizens

to their legal rights. Officially, these reforms were intended to combat political corruption and financial crime in all its forms, as well as to create a more stable and secure environment for business and trade. These strategic directives implemented by bilateral and multilateral bodies resulted, as Ran Hirschl observes, in the 'constitutionalization of rights and the establishment of relatively autonomous judiciaries and supreme courts armed with judicial review practices'.[14]

This expansion of the capacities of the judiciary took as its model the American judicial system, which was then exported to Latin America, Asia and Africa. It is often touted as a quintessential example of democratization in these regions, which were seen as lacking a stable and firmly grounded constitutional architecture.[15] This process was, however, ambivalent: although it sought to protect individual and property rights, it showed no genuine interest in a wider conception of human rights encompassing social and economic rights. In reality, this new constitutionalism was imposed to the detriment of representative institutions and often as a rampart against any progression in terms of workers' and citizens' rights. As Hirschl has also pointed out, it is the fruit of an alliance between political and economic elites (who, on the face of it, agree to submit to certain deontological rules) and legal professionals (whose room for manoeuvre, legitimacy and social influence are considerably expanded). We should therefore be wary of jumping to the conclusion that the constitutionalizing of rights is synonymous with genuine democratization in the sense of a greater redistribution of wealth or a wider sharing of power. The expansion of the judiciary has scarcely contributed to any advances in distributive justice, but it has put the domination of political and financial elites on a much firmer footing.[16] Foreign operators and multinationals have thus been able to count locally on the support of judges and ministry officials, even where their interests run counter to the country's own interests. This alliance between these new elites has resulted in a significant elevation of the economic and social status of senior members of the judiciary. The salaries of Brazilian magistrates, for example, more than doubled in the two decades between 1995 and 2016 (rising by 112 per cent).[17] Legal professionals across Latin American have been intent on presenting themselves as competent, impartial experts who are exempt from the corruption of the political world and are the disinterested crusaders for greater probity in politics and business. But these legal trappings have, in fact, enabled them

to intervene politically at a time when the credibility of elected representatives is at a low ebb everywhere. In this respect, they are, in a sense, usurpers who have converted the judiciary into the guardian of the constitutional order and the sole arbiter of the public good. These agents of the state apparatus pose as mere technocrats, hoping their class prejudices, as a remarkably upwardly mobile group, will go unnoticed. The greater autonomy granted to the judicial domain in Latin America generally, and Brazil particularly, has ultimately resulted in a depoliticizing of the political sphere and a comparatively passive civil society. In the face of a supposedly neutral and technically proficient judiciary, the scope for political intervention by subjugated groups has been significantly reduced. When they do succeed in joining the legal profession, they are obliged to bend to its codes and rhetorical conventions. During the presidential terms of Lula and then Dilma Rousseff (2003–16), the judiciary (and indeed the federal police) attained such a degree of autonomy and bureaucratic impregnability that it was able to intervene politically in its own name.

Contesting universal suffrage by legal means

Granting greater autonomy to the judiciary and the police has proved antithetical to citizen participation and the admission of new protagonists to the political stage, which remains dominated by a socio-economic elite that perpetuates its status through mechanisms of self-representation and self-legitimization. The conservative nature of constitutionalizing rights and legally framing social relationships is nowhere more evident than in the political sphere when popular causes are blunted through recourse to legal standards and the constitution, or when the leaders of left-wing parties and protest movements are prosecuted and sentenced by the courts. Appealing to the constitution or the law to thwart the popular will as expressed through universal suffrage is nothing new, nor is it specific to countries of the Global South. In 2015, when Jean-Claude Juncker was president of the European Commission, he was quite clear about the implications of constitutionalization: ‘There can’t be any democratic votes against the European treaties.’ In the same interview in *Le Figaro*, he commented on the recent election of Alexis Tsipras in Greece: ‘To imagine that everything

is going to change because there's a new government in Athens is wishful thinking.'[18]

Lawfare as currently practised, especially in Latin America, is a systematic legal negation of all forms of popular sovereignty. The difference now, compared to the coups d'état fomented by the United States in South America in the 1960s and 1970s, is that the overthrow of left-wing governments has been legitimized by appealing to the rule of law – a move that generally receives the assent of much of the parliamentary elite and the mass media. Lawfare has thus resulted in an apparent oxymoron: *legal coups*. Since 2008, there have been numerous such manoeuvres in Latin America, sometimes successful and sometimes not. The first strategic success during this period was scored in Honduras in 2009 against the elected president Manuel Zelaya. A year earlier in Bolivia, there had already been a failed coup attempt against its leader Evo Morales. But the list of failed or successful coups does not stop there: there was an attempted coup in Ecuador in 2010; a coup in Paraguay in 2012; failed coups against Nicolás Maduro in Venezuela in 2014 and 2019; a parliamentary coup in Brazil in 2016; legal action against the opposition leader Ollanta Humala in Peru in 2017; the exile of Rafael Correa in Ecuador in 2018; and the forced resignation of Evo Morales in 2019 after the election results were contested. The resurgence of neoliberalism on the subcontinent is not exclusively attributable to legal coups, but these have played their part in the wave of election victories that brought to power Mauricio Macri in Argentina in 2015, Sebastián Piñera in Chile in 2010 and again in 2018, Lenín Moreno in Ecuador in 2017, Pedro Pablo Kuczynski and Martín Vizcarra in Peru in 2016 and Juan Manuel Santos and Iván Duque in Colombia in 2010 and 2018, respectively.[19]

Brazil: a textbook example of lawfare

In Brazil, the 2016 institutional coup against Dilma Rousseff, who was elected president in 2014, was a striking illustration of this trend. The pretext for initiating impeachment proceedings against her was alleged fiscal peddling (using state-owned banks to put up the funds required for paying government obligations without officially declaring a loan). The court responsible for monitoring public expenditure refused to sign off on the government's accounts, deeming these financial manoeuvres to amount to bank loans, which is forbidden under budgetary responsibility rules. The subsequent impeachment trial in the Senate followed suit, with Rousseff accused of trying to bypass the budgetary rules. But this was ultimately a diversion – the true purpose of the impeachment was to criminalize policies that sought to increase government spending beyond the limits set by austerity rules. As Tatiana Roque has pointed out:

> When all is said and done, it marked the beginning of a process of constitutionalizing economic policy, the apotheosis of which was the first measure to be implemented by the government in 2016: an amendment to the constitution that imposed a ceiling on government spending.[20]

This constitutionalization, unprecedented in the history of Brazil, may only have applied at the federal level, but it nevertheless hit the education and health systems very hard.

It is clear that the lawfare strategy was aimed directly at serving neoliberal interests, but it did not end there. After voting to oust Rousseff, the new priority of the anti–Workers' Party bloc was to ensure that Lula was unable to stand in the 2018 presidential election. The so-called Operation Car Wash (Lava Jato) launched by the judge Sérgio Moro in 2014 afforded the ideal framework for this new offensive. Those spearheading it portrayed judges as the spokespeople of the street and guardians of the common good. In the name of the interests of the people and moral standards, a raft of legal and political innovations was implemented, such as payments for informers, preventive detention, leaks to the media concerning trial evidence and extensive media coverage of supposedly spontaneous demonstrations in support of the actions of the judiciary. Every conceivable tactic was deployed to discredit Lula and undermine his popularity, which was made possible by the close ties between the media and the judicial apparatus. In

March 2016, in a flagrant breach of his constitutional rights, Lula was arrested in front of the cameras of the main television channels, and in September of that same year federal prosecutors from the Lava Jato task force held a press conference at which they portrayed him as the head of a criminal organization. His persecution intensified when his case came before the Regional Federal Court 4 (TRF-4) in Porto Alegre, which cut off all other legal avenues available to him by arguing that his rights as a defendant had been respected during his original trial. The TRF-4 judges went further, increasing his prison sentence to twelve years and one month and ideologically endorsing Operation Car Wash by arguing that the so-called anti-corruption drive was not subject to the usual provisions of the Brazilian penal code.

There can be little doubt that the intervention of Judge Moro and his task force directly paved the way for Bolsonaro taking power. As events unfolded, it became increasingly clear that Java Lato was in fact about restoring the power of political and business oligarchies, running roughshod over due process and the right to fair trial (threats, blackmail, extortion and illegal detention). Judge Moro, who passed the original prison sentence on Lula, later served for several months as Bolsonaro's justice minister.

An entrepreneurial version of the rule of the law

This proliferation of lawfare tactics raises the question of what the rule of law means today. It is undeniable that it has been twisted in a neoliberal direction. Punctilious thinkers, including Hayek, established an early distinction between the *material* and *formal* rule of law: the latter 'requires only that each act of government is authorized by legislation', whereas the former takes account of whether 'a law consists of a general rule of just conduct' applicable to all.[21] In other words, the formal conception of the rule of law is interested only in the legal form, not the legal content, whereas its material version requires that the protection of individual rights reflects universal and uniform principles. As we have already emphasized, the significance of this distinction becomes clear when we consider that these rules of just conduct in fact relate exclusively to the domains of private and criminal law, individual freedom boiling down to the entrepreneurial freedom of private citizens to do business.[22] What is so

striking is that this so-called formalism – much maligned if it means that the legislature is the sole lawmaker – is actively championed if it serves to exclude as a matter of principle any legal grounds for demanding social justice. It would be more accurate to describe this singular conception of the rule of law as the rule of *private* law, insofar as the state finds itself subject to the sovereignty of private law.

But we have to move beyond these formal considerations if we are to understand the mindset that informs the neoliberal perverting of the rule of law. We need to ask what necessary function such a state performs. In *The Birth of Biopolitics*, Foucault sees the increasing 'formalization of society on the model of enterprise' as a characteristic feature of the neoliberal art of governing. This implies an expanded role for judicial institutions: as the enterprise model spreads, frictions and legal disputes between companies become more frequent and there is an ever-increasing need for judicial arbitration. As Foucault succinctly puts it: 'Enterprise society and judicial society; two faces of a single phenomenon.'[23] If, in the light of this observation, we analyse competition between political parties, we can appreciate just how far this logic extends. In the neoliberal era, this competition plays out according to the enterprise model and therefore increasingly involves recourse to judicial arbitration to resolve disputes between parties-cum-businesses. The exploitation of this legal resource is not merely a political strategy driven by competing interests in which underhand tactics are par for the course. It is ultimately the consequence of the unprecedented elevation of the judiciary's status in a society geared towards extending the enterprise model. The case of Brazil is far from being an exception. The many legal challenges to voting procedures filed by Trump in state courts before the result of the US presidential election was even announced are another notable example. The rule of private law requires a judicializing of the whole of society.

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1 See Chapter 4.

2 'Attaque à Nice: Le débat monte sur une législation d'exception', *Les Echos*, 29 October 2020.

3 Amnesty International, 'Dangerously disproportionate: The ever-expanding national security state in Europe', 17 January 2017.

4 Mireille Delmas-Marty, 'Le projet de loi antiterroriste, un mur de papier face au terrorisme', *Philosophie Magazine*, 31 July 2017.

5 Manuel Valls, in a speech given during the debate on the draft bill to revise the constitution on 5 February 2016, cited in Véronique Champeil-Desplats, 'Aspects théoriques: Ce que l'état d'urgence

fait à l'État de droit', *Ce qui reste(ra) toujours de l'urgence*, Centre de recherches et d'études sur les droits fondamentaux (CREDOF), February 2018.

6 Marie Goupy, *L'état d'exception ou L'impuissance autoritaire de l'État à l'époque du libéralisme*, CNRS, 2016; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, Stanford University Press, 1998.

7 Michel Foucault, *On the Punitive Society: Lectures at the Collège de France 1972–1973*, trans. Graham Burchell, Palgrave Macmillan, 2015, p. 33.

8 Orde F. Kittrie, *Lawfare: Law As a Weapon of War*, Oxford University Press, 2016.

9 See Cristiano Zanin Martins, Valeska Teixeira Zanin Martins and Rafael Valim, *Lawfare: Uma introdução*, Contracorrente, 2019.

10 John Carlson and Neville Yeomans, 'Whither Goeth the Law – Humanity or Barbarity' in Margaret Smith and David Crossley, eds, *The Way Out: Radical Alternatives in Australia*, Lansdowne, 1975.

11 Charles J. Dunlap Jr, 'Law and Military Interventions: Preserving Humanitarian Values in 21st-Century Conflicts', Harvard Kennedy School, November 2001.

12 General Dunlap concludes his essay by stating: 'We must remind ourselves that our opponents are more than ready to exploit our values to defeat us, and they will do so without any concern about LOAC [the law of armed conflict].'

13 See Roberto Dañino, 'The Legal Aspects of the World Bank's Work on Human Rights', *International Lawyer*, vol. 41, no. 1, Spring 2007.

14 Ran Hirschl, 'The Political Origins of the New Constitutionalism', *Indiana Journal of Global Legal Studies*, vol. 11, no. 1, January 2004, p. 73.

15 See C. Neal Tate and Torbjörn Vallinder, eds, *The Global Expansion of Judicial Power*, New York University Press, 1995. See also Chapter 1 of this book for a discussion of Chile's constitution of 1980.

16 See Hirschl, 'The Political Origins of the New Constitutionalism', pp. 72–3.

17 Rodrigo Burgarelli and André Carmona, 'Salários do Judiciário mais que dobraram em 20 anos', *Exame*, 27 June 2016.

18 Coralie Delaume, 'Du traité constitutionnel à Syriza: L'Europe contre les peuples', *Le Figaro*, 2 February 2015.

19 Bárbara Dias and Jean-François Deluchey, 'Neoliberalismo, neofascismo e neocolonialismo na América Latina', *Jornal Resistência*, December 2019, pp. 4–5.

20 Tatiana Roque, 'Brésil: Une crise en trois actes', *La vie des idées*, 28 May 2019. See also Chapter 4 of this book on the subject of constitutionalization.

21 Friedrich Hayek, 'The Principles of a Liberal Social Order', *Il Politico*, vol. 31, no. 4, December 1966, p. 605.

22 See Chapters 2 and 4.

23 Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, Palgrave Macmillan, 2010, p. 155.

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Neoliberalism and Authoritarianism

As we come to the end of this history of neoliberalism, which has brought us right up to the present day and its contemporary forms, it is time to confront a question that has been approached from various angles throughout this book: wherein lies the true *novelty* of neoliberalism compared to its historical antecedents? It is important to identify its uniquely defining characteristics, since there is an all-too-common tendency these days to downplay its originality by assimilating it into systems that existed prior to its emergence. Two specific approaches have tended to lead to a misunderstanding of what has set it apart from the outset. The first is based on a misleading historical analogy according to which neoliberalism, particularly in its most authoritarian current forms, marks a linear resurgence of the fascism of the past (or least a new form of fascism that shares certain traits with the previous iteration). The second directly assimilates neoliberalism with the political authoritarianism that immediately preceded the Nazi era – what Hermann Heller in 1933 dubbed the 'authoritarian liberalism' of the Franz von Papen government.[1]

This is not a purely historical question, as it has direct implications for the way in which we analyse contemporary forms of neoliberalism. It is fairly symptomatic that public debate on the nature of neoliberalism in recent years should have focused on the notion of authoritarianism. What is at issue here is the nature of the relationship between neoliberalism and what is generally termed far-right populism. Since 2016, which saw the election of Trump and the Brexit referendum, certain commentators have

been quick to speak of the death of neoliberalism, which they see as somehow at odds with far-right populism.[2] Others, by contrast, have insisted on amalgamating the two phenomena under the umbrella of authoritarian liberalism or indeed have sought to redefine the meaning of authoritarianism.[3] But what exactly does this word mean? Does it refer to the ubiquitous trend of boosting the executive's powers and restricting civil liberties? Is it about redefining freedom from a nationalist neoliberal perspective, resulting in what Wendy Brown calls 'anti-democratic and anti-social authoritarian freedom'?[4] But what then of its globalist iteration? Is that free of authoritarianism? However freedom might be redefined, we should also bear in mind that fascism itself entailed a distinctive conception of authority, namely that it must dominate minds and 'reign there uncontested'.[5] Does that mean that we can reduce it to a simple variation on the theme of authoritarianism?

A neoliberal fascism?

There can be no doubt that certain current varieties of neoliberal domination are underpinned by government tactics that could be described as neofascist: leaders whipping up the crowds; public legitimizing of racism; armed militia parades; the deployment of the police or army against opponents; and disregard for the law – these are all manifestations of the new governmentality and the dismantling of democracy. We cannot rule out the possibility of a resurgence of fascism, given the extent to which neoliberalism has provoked the despair and political impotence of whole sections of the population, who are increasingly tempted to take a chance on governments that are even more authoritarian, violent and racist than our current neoliberal ones.[6] Indeed, it is undoubtedly true that neoliberal states have developed an arsenal of exceptional legal provisions, as well as habituating citizens to violent forms of repression, thereby taking us at least part of the way down a path to a possible fascist dictatorship. But this remains a possibility only – we should be wary of equating the most authoritarian forms of neoliberalism as they exist today with the fascism of the past. This is, however, exactly what some commentators have been doing of late, especially since the election of Trump in the US and Bolsonaro in Brazil. In both countries, we have seen growing talk of

‘neoliberal fascism’ and ‘fascist neoliberalism’. Henry Giroux, for example, asserts that neoliberal fascism is a distinct economic and political form that blends economic orthodoxy, militarism, contempt for institutions and laws, white supremacism, male chauvinism, a hatred of intellectuals and amorality. He borrows from historian Robert Paxton the idea that fascism is driven by the same deep-seated emotions as neoliberal fascism, including: passionate devotion to the leader; extreme nationalism; racist fantasies; contempt for the weak, inferior and foreign; disregard for people’s rights and dignity; violence towards opponents; and hostility towards science and reasoned argument.[7] Although we do indeed find all these elements in Trumpism and Bolsonaro’s brand of politics, are we not in danger of overlooking certain distinct features of contemporary neoliberalism by assimilating it to the fascism of the past? Paxton himself concedes that although ‘Trump has adopted a number of typically fascist tropes’, these are indicative more prosaically of a ‘plutocratic dictatorship’.[8] For, as he is keen to stress, there are also significant differences with fascism: no one-party state; no banning of the opposition and any form of dissidence; no mobilizing and brainwashing of the masses through compulsory membership of strictly hierarchical organizations; no corporatism; no political religion; and no ideal of the citizen-soldier completely loyal to the total state.[9] It is worth noting in passing, however, that Paxton, although he continued to insist on these nuances, nevertheless described Trump as a fascist after the storming of the Capitol on 6 January 2021, comparing events to the rioting of far-right leagues in Paris on 6 February 1934.[10] But concluding that Trump himself is a fascist by no means implies that his electoral base and Republican supporters are also fascists. Even experts, it seems, find the question of the relationship between Trumpism and fascism to be a tricky one.

Reaching for this label is a legitimate enough move in the political battle and may even bring certain rewards, but there is a danger of skating over complex and distinctive phenomena in favour of dubious generalizations that could even weaken the political argument of neoliberalism’s opponents. In a 1932 article entitled ‘The Doctrine of Fascism’, Giovanni Gentile and Benito Mussolini identify the state as the true cornerstone of fascism: ‘Fascism conceives of the State as an absolute, in comparison with which all individuals or groups are relative.’[11] In the same article, they are careful to distinguish the fascist state from liberalism: ‘Liberalism denied the State

in the name of the individual; Fascism reasserts the rights of the State as expressing the real essence of the individual.'[12] For the fascist, the state is all-embracing, and it is in this precise sense that fascism is totalitarian. It is, therefore, opposed to economic liberalism, as the following passage makes perfectly explicit: 'Fascism desires the State to be strong and organic, at the same time reposing upon broad and popular support. The Fascist state has drawn into itself even the economic activities of the nation.'[13] The path taken by Mussolini is, in fact, a textbook case of a U-turn on economic liberalism: whereas in 1921 he was still declaring himself to be a liberal determined to return to 'Manchester' (that is, laissez-faire) economics, in 1938 he condemned the 'night-watchman' state, asserting that the 'fascist state cannot restrict itself to mere surveillance and oversight as liberalism would have advocated'.[14] Assimilating the 'total state' of fascism, which aims to absorb the whole of civil society within the system, with the general spread of the enterprise-based market model throughout society is thus at best a superficial analogy. Far from embedding the markets in a state or parastatal framework, Trump and Bolsonaro advocated the privatization of state-owned companies and public services, the deregulation of the financial sector, lower taxes for the richest in society and reduced social benefits and subsidies for education. In other words, state violence is deployed in the service of freeing up the capitalist economy and transforming public services into competitive businesses. Bolsonaro's move to end the state monopoly over the postal service and open it up to competition is a classic example of this. We are living through a time when an unprecedented political form is emerging from the core of neoliberalism; this combines anti-democratic authoritarianism, economic nationalism, ubiquitous competition and an expanded capitalist mindset. This new form of governmentality fully embraces the absolutist, authoritarian and (when necessary) dictatorial aspects of neoliberalism, while nevertheless remaining distinct from the fascism of the past.

At this point, it is worth dwelling on the aspects of neoliberalism that cannot be equated to fascism or Nazism. The first is the role that politics plays in relation to economic interests. Contemporary historians have distanced themselves from Marxist interpretations that saw in fascism and Nazism the armed branch of a capitalist class threatened by the communist revolution. Specifically, they have shown that these were highly political phenomena that obeyed a certain internal logic and cannot be reduced to the

maximizing of industrial and banking profits. Without denying the economic component, they have placed due emphasis on ideological motives, nationalist values and the importance of community solidarity and identity questions. They have also stressed the very particular historical context in which fascism and Nazism emerged, the First World War having left deep psychological scars, created a mentality of total mobilization and bequeathed a nationalist thirst for revenge that the fascist state would slake. But in every variation on the neoliberal theme, the economy indubitably continues to rule the roost, not least through the state interventionism that characterizes neoliberalism. Politics is placed at the service of the dominant economic classes, for whom the advent of governments prepared to rein in the unions, independent media and left-wing parties (as was the case in Brazil) has been a veritable windfall. Above all, politics is inculcated with an economic mindset, importing capitalism's mechanisms and even its jargon into every conceivable domain.

Yet, the one thing that Nazism and neoliberalism may well have in common is what has come to be known as social Darwinism. The term is unfair to Darwin, but we will nevertheless use it for the sake of convenience. It denotes an ideology according to which both nature and society are characterized by constant, across-the-board competition in which some species and, in the case of humankind, certain nations and 'races' will die out. In the battle of the species, the strongest win out over the weakest. Nazism was in its very essence an ideology of social Darwinism, with the elimination of the weakest always a possibility: the superior races had the biological right to defend themselves, and indeed it was their duty to dominate or eradicate inferior races. As Johann Chapoutot argues, this discourse 'apprehends all lives through the lens of the struggle for survival'. He goes on to remark: 'War is first and foremost a simple fact of life. But it is also a norm and an ideal: it has to exist because it is a good thing.'[15] This applies to both Nazi Germany and Italian Fascism: 'Only war can unleash the full potential of human energy, while conferring a noble seal on peoples brave enough to embrace it.'[16] But the social Darwinism of neoliberalism is different in that it is not seeking a military conflict, still less to annex territories and the elimination of inferior races is not on its agenda. Its driving principle is competition on the economic battleground through the markets, which imposes a duty on the state to arm its institutions to this end and to win the minds and hearts of the people – it is not about

mobilizing an entire community into which every individual has been subsumed. This is no doubt the major difference. Neoliberalism, however hostile to liberal democracy and civil liberties it may be, and however violently it may fan the jingoistic flames of nationalism and racism (as Trump has done), does not aim to subjugate individuals to the state, to transform them into model humans or elevate them to untainted exemplars of a superior race. We are a long way from the project to make humans anew that underpinned Italian Fascism or the Nazi project to resurrect the 'original purity' of the 'Ur-German essence'.[17]

Somebody like Trump prefers to leave the running of serious matters to the experts, the businesspeople and the bureaucrats; he has no interest in rigidly regimenting the masses as the fascists did. Admittedly, as the events of 6 January demonstrated, he has no compunction about exploiting existing fascist or supremacist militia such as the Proud Boys when the opportunity presents itself, but he has not gone so far as to set up his own militia centred around the cult of his personality, and this is already a significant distinction. Neoliberalism, even its most brutal form, does not merge individuals into a close-knit community governed with an iron fist as the Nazis did with the 'front-line comradeship' (*Frontgemeinschaft*) or the Fascists with their conception of the nation as an organism.[18] On the contrary, it glorifies individuals above and beyond common sense, reason and the national interest; it endorses every expression of their freedom, their initiatives, their choices and their determination to be the best and fulfil their full potential. The way in which both Trump and Bolsonaro responded to the pandemic – by encouraging people to ignore safety guidelines such as wearing masks – tells us all we need to know about how they view the relationship between the individual and the community. There is a quasi-libertarian character to this championing of 'deregulated' private freedom, though paradoxically this requires an expansion of state power in the form of a protectionist paternalism in relation to both the economy and security issues.[19] But it is certainly distinct from fascism and Nazism and their drive to subjugate individuals.[20]

Authoritarian liberalism?

Instead of fascism, can we apply the label of ‘authoritarian liberalism’ used in the title of the Hermann Heller article published in 1933 just before he went into exile in Spain (and where he died in 1934)? Heller notes that the notion of the authoritarian state was embraced by the Papen government in 1932 and is associated with Carl Schmitt’s defence of a ‘strong state and sound economy’ in a lecture given on 23 November 1932.[21] He points out the irony of Schmitt’s ‘intellectually played about solution [of the] total and, therefore, strong state’, coming as it did from a conservative only recently converted to the ‘freedom of the economy from the state’ and provides a highly original analysis of this stance by placing it within a specific political context marked by the metamorphosis of German conservatism in the early twentieth century: ‘Prussian conservatism decidedly rejected the bourgeois-liberal capitalism’, resulting in ‘national liberalism’.[22] In the twentieth century, however, a ‘sociological mutation’ took place that drove a ‘reverse process’: conservatism embraced capitalism or, more precisely, ‘the capitalist spirit penetrated into conservative layers of society’.[23] This mutation resulted in a new perception of the state: the old liberal bourgeois mistrust of Wilhelmian authoritarianism was replaced by an authoritarian liberalism that called for a new kind of state.[24] As Augustin Simard points out, it was the panicked realization that its social foundations were fragile (starkly illustrated by the revolution of 1918) that drove the bourgeoisie to reconcile itself with Wilhelmine authoritarianism.[25]

But why describe it as *liberalism*? The point of this remarkable linguistic sleight of hand is to present the transition from national liberalism to authoritarian liberalism as seamless, as though they were simply two historical variations on the same theme. For Hermann Heller, this designation ‘is justified primarily by how its proponents position themselves vis-à-vis the cardinal problem of the present, that is, the question of the economic order’. The new conservatives were demanding that the state beat ‘a full “retreat” from the economy’. Abandoning the anti-capitalist scruples of their nineteenth-century predecessors, they looked ‘confusingly similar to the old Manchester men’.[26] It is worth highlighting this reference to the Manchester School, which defended a free economy and a smaller state primarily acting as a night watchman (protecting property and ensuring people’s personal safety). By contrast, the new conservatives, although they also advocated a free economy, defended a

strong and authoritarian state. It is a curious combination of Manchester School economic liberalism and political authoritarianism inherited from the Wilhelmine and Bismarckian empire. In short, the new conservatives set themselves apart from the 'old Manchester men' not on the economic front but exclusively in terms of their attitude towards the state. In both cases, economic liberalism means the same thing (the freedom of the economy from the state) and so it is in the application of the adjectives *national* or *authoritarian* to liberalism that the crucial difference lies.

It is in terms of this historical mutation that Heller interprets Schmitt's call for the freedom of the economy from the state *and* an authoritarian state: Schmitt believes that only a very strong state can loosen the overly tight bonds between the state and the economy. Depoliticizing the economy is an eminently political state act. Only a strong state has enough authority to effect a retreat from the economy of its own accord.[27] In other words, the state needs to be authoritarian if it is to fulfil the mission assigned to it, namely to free the economy from its bonds with the state. Whereas a weak total state 'makes an attempt to order the economy in an authoritarian way', the strong total state 'draws a sharp line of separation vis-à-vis the economy'.[28] But for Heller, this is only one aspect of the new liberalism. At the same time, the Papen government was working towards the 'authoritarian dismantling (*Abbau*) of social policy'.[29] This was principally directed at health insurance and unemployment benefits but also had a socio-cultural dimension as it called into question the principle of compulsory education. And as we saw in Chapter 3, the strong total state also typically arrogates to itself a monopoly over military resources and mass media (radio, cinema), the concentration of state power in these domains being the flipside of its withdrawal from the economy. Heller concludes that authoritarian liberalism has three principal characteristics: 'retreat of the "authoritarian" state from social policy, liberalisation (*Entstaatlichung*) of the economy and dictatorial control by the state of politico-intellectual functions'.[30] What is striking is the *negative* connotation of Heller's vocabulary here. Though he chooses to use the word *liberalism*, he couches it in critical terms and shows how it can result in political authoritarianism.

The validity of Heller's notion of authoritarian liberalism has undoubtedly been borne out by recent German history. But what exactly

was Schmitt's political influence in all of this? Heller believes it was instrumental, and indeed the young socialist Otto Kirchheimer, a friend and former student of Schmitt, contends that he acted in the shadows as a kind of state 'oracle'. Is it possible to read between the lines of his November 1932 lecture and detect a sympathy for the Italian Fascist state or Hitler? There is, in fact, no evidence to justify such an interpretation, despite what Heller may have claimed.[31] It is certainly true that Schmitt no longer subscribed to 'plebiscitary legitimacy' in 1932, as he did in 1923 when he welcomed Mussolini's March on Rome.[32] What we do know is that, in August 1932, following the indecisive federal elections in July, Schmitt helped elaborate a coup plan for the Papen government to declare martial law, which would have involved dissolving the Reichstag, indefinitely postponing elections, bringing the police primarily under the responsibility of the Interior Ministry and disbanding the Nazi and Communist parties if necessary.[33] Schmitt suggested this ban not to defend the Weimar constitution, but to safeguard the state and the 'German constitution' from the mortal danger they were in.[34] In January 1933, he even made a final attempt to stop Hitler becoming chancellor.[35] Thereafter, he found it increasingly difficult to promote his concept of the strong total state. In May 1933, one of his disciples, the jurist Ernst Forsthoff, sought to adapt Schmitt's idea to the ideology of the new regime by rebranding the total state (*totaler Staat*) as a racial community (*völkischer Staat*).[36] In January 1934, the Nazi Party ideologue Alfred Rosenberg launched a characteristic attack on Schmitt's notion of the qualitative total state, criticizing it for attributing too great a role to the state.[37] In December 1936, Schmitt was relieved of any official function.

Beyond the insight that authoritarian liberalism offers into Schmitt's political outlook in 1932, should we also credit Heller (as Augustin Simard does) 'with remarkable foresight' in terms of the response to the difficulties which Keynesian economics encountered after the war, 'whether from the new right, the *Ordoliberalismus*, Thatcherism or the political doctrines inspired by Milton Friedman?'[38] It is certainly true that Heller talks specifically of a 'neoliberal state' when discussing Schmitt's authoritarian state, but did that adjective have the same meaning for him as it does for us today? And when exactly did it take on its modern meaning? On closer examination, the answer is more complex than the simple presence of the

word ‘neoliberal’ in the Heller paper would suggest. Simard himself believes that the Schmitt of 1932 ‘was more concerned with the conservative component rather than with neoliberalism strictly speaking’, unlike Renato Cristi, who considers that Schmitt was always a ‘loyal champion of (neo)liberalism’.[39] Does Schmitt’s stance really anticipate neoliberalism, and can we identify both a conservative and a neoliberal element, properly speaking, in his thinking? We need first to define what we really mean by *neoliberalism*.

The singular role of the law in neoliberalism

Strictly speaking, neoliberalism did not emerge in 1932 in Germany, either as a doctrine or as government policy. As a doctrine, it was born in 1938 with the Walter Lippmann Colloquium, along with the word itself.[40] Its elaboration had already begun beforehand through essays and discussions, but it took shape at and through the colloquium, whose aim was to lay the foundations for updating liberalism. Rougier devoted a large part of his address to explaining the difference between this new liberalism and the old type. So where exactly does this difference lie? The key premise is that: ‘The question of the legal framework best suited to the smoothest, most efficient and steadfast functioning of markets has been neglected by classical economists.’ In Rougier’s view, the ‘liberal regime . . . is also the result of a legal order that presupposes a legal interventionism of the State’.[41] He uses the metaphor of the Highway Code to explain that being liberal ‘is not, like the “planner”, fixing for each car its hour of exit’, nor is it ‘like the “Manchesterian”, letting cars drive in all directions’ (the latter being the type that Heller links to German conservatism).[42] Far from being an isolated position, this championing of the legal interventionism of the state is a leitmotiv of every address at the colloquium, regardless of which current of thought the speakers represent. For Rüstow, for example, the ‘fundamental fact’ is that ‘the market economy is, as we all know today, based on very specific institutional conditions, created and maintained voluntarily by men, and that it can function without friction and effectively only if a strong and independent State ensures the precise observance of these conditions’.[43] To cite just these two authors, however, is to run the risk of overlooking the originality of another school of thought that was also

well represented at the colloquium, namely the Austrian current of Mises and Hayek that later came to be known as the Austrian-American school in light of its subsequent evolution.

As we have been at pains to emphasize throughout this book, there is no basis to the myth of an ultra-liberal, anti-state Hayek who was opposed to the social and progressive liberalism of Röpke and Rüstow. We have already seen how ambivalent Hayek was regarding Schmitt's philosophy. In *Law, Legislation and Liberty*, he approvingly cites *Legality and Legitimacy*, published in 1932, and refers to *The Crisis of Parliamentary Democracy*, which came out the following year.[44] In so doing, he telescopes two distinct phases of Schmitt's thinking without taking into account the context of his arguments. All he retains is the critique of the parliamentary state, which in fact has a different focus in each case: in 1923, Schmitt was endorsing the direct democracy of the plebiscitary *acclamatio*; whereas in 1932, he was referring to the president of the Reich as guardian of the constitution. But this is not a key point for Hayek. We can summarize his view by stating that he essentially takes two things from Schmitt: on the one hand, he is indebted to him for being one of the first to show how a parliamentary state can evolve towards a total state; on the other hand, he takes issue with the manner in which Schmitt *legitimizes* such a development. In fact, this Schmittian ambiguity is already present in his two conference papers of 1932, the themes of which he revisited in January 1933 in the revealingly titled book chapter 'Weiterentwicklung des totalen Staat in Deutschland' (Further Development of the Total State in Germany).[45] Schmitt assumes the total state to be a simple empirical fact to which it is pointless to object. But he is at pains to differentiate between two types of total state, arguing that the new historical choice lies *within* the total state itself, as opposed to being a choice between a total state and a strong state, as was the case in July 1932.[46] Hayek's mitigated view relates to the ambiguity of Schmitt's thought, as *The Road to Serfdom* makes clear. When acknowledging his debt, Hayek refers to Schmitt's analysis of the evolution of states dating from 1931 in *Der Hüter der Verfassung* (The Guardian of the Constitution) and describes its author as a 'leading Nazi expert on constitutional law'.[47] But, in the same book, Hayek takes issue with the British historian Edward H. Carr for adopting the 'doctrine of Professor Carl Schmitt, the leading Nazi theoretician of totalitarianism', by asserting that the distinction

between society and state no longer had much meaning.[48] It is as if there were two Schmitts. The 1931 version asserts that he is still opposed to the state becoming total, which earns him the epithet of 'eminent expert'. Which Schmitt is Hayek referring to, then, when he describes him as a 'Nazi totalitarian thinker'? As several passages in Hayek's oeuvre indicate, the decisive and controversial question is the nature of the law. In 'The Principles of a Liberal Social Order' (1966), Hayek attributes to 'Adolf Hitler's "crown jurist"' a conception of the purpose of the law as being 'concrete order formation', which is at odds with the 'thinking of liberal law'.[49] In the first volume of *Law, Legislation and Liberty*, Hayek observes in the same vein that 'Carl Schmitt who, long before Hitler came to power, directed all his formidable intellectual energies to a fight against liberalism in all its forms'.[50] In these two passages, written seven years apart, Hayek refers to the same 1934 text entitled *On the Three Types of Juristic Thought*, which was based on two lectures given in February and March of that year.[51] He was commissioned to write it as a jurist who had rallied to the new regime on the first anniversary of Hitler's ascension to power, and in it he advocated his new 'concrete order formation' conception of the law. This complex and distinctive concrete order was the expression of an organic community (be it family, clan, corporation, church or state). In contrast to what he called the normative approach, Schmitt argues that rules and norms, rather than being some abstract entity, presuppose such a community. This line of thinking thus directly echoes the Nazi doctrine that the community of the people (*völkische Gemeinschaft*) is the only proper source and constituent of the law.

We can, therefore, understand Hayek's criticism in the two passages cited above. In 1934, Schmitt was arguing for the replacement of the normative conception of the law with a conception derived from public law. In other words, a shift from uniform rules of individual conduct to organizational rules geared towards specific ends. In Hayek's view, it is this shift that was responsible for the totalitarian drift of Western societies, which is to say the evolution towards the total state that Schmitt himself had lucidly analysed in 1931 and 1932. His critique is informed by a conception of the law defined by its uniformity, general application and predictability, not by the fact that it is derived from some legislative authority.[52] In 1934, by contrast, Schmitt directly attacked what he called the functional conception of order

founded on ‘predetermined, calculable, general rules’. He gives two examples of such an order: ‘scheduled railway traffic [with] the impersonal matter-of-factness of the timetable “rules”’; and ‘the well-regulated traffic on the highways of a modern metropolis [where] the last vestiges of human rule and choice, as represented by the traffic policeman, appear to be replaced by precisely functioning, automatic traffic lights’. A conception of order of this type could be applied to an ‘individualistic, bourgeois commercial society’ which is ‘focused solely on the calculability of a sure regulation’.[53] As we have seen, though, it was precisely this metaphor of the Highway Code that the pioneers of neoliberalism invoked at the Walter Lippmann Colloquium to denote the type of legal order appropriate to a free society. The metaphor rests on the idea that the law fulfils certain formal functions, such as predictability; whereas for Schmitt this ideal of predictability necessarily entails a standardization of norms (*Normierung*) that is incompatible with the logic of a concrete order that is resistant to being subsumed within the ‘functionalism of predetermined laws’.[54] Schmitt’s critique of the normative approach in 1934 was thus bound to clash with the neoliberal conception of the law, and not merely Hayek’s. *All* neoliberals, whether they see laws as creations of the state or as rules arising out of customary law, subscribe to the idea of the law as a formal rule that does not stipulate any specific concrete action. In Hayek’s own binary conception of the nature of the law, it is a case of the general norms of private law versus the specific rules of public law. It follows that, however deep Schmitt’s influence on Hayek, it would be quite wrong to see him as the spiritual father or unacknowledged founder of neoliberalism – or, indeed, to see Hayek as his disciple. Schmitt is ultimately a conservative champion of the state whose economic liberalism cannot be equated to neoliberalism properly speaking. Perhaps Hayek overemphasizes his differences with Schmitt, but this nevertheless indicates that he does not regard himself as Schmitt’s intellectual heir. We should, in any case, abandon the illusion that everything derived from a single source. On the contrary, several wellsprings (American, French, German and Austrian) contributed to the birth of neoliberalism in 1938.

’Authoritarian liberalism’ or neoliberalism

In light of the above, how valid is the label suggested by Heller for this singular political phenomenon known as *neo*liberalism? It is entirely pertinent in the case of the new *German* liberalism that emerged in the early 1930s, as defined by Schmitt in July 1932 and implemented by the Papen government. But it is deficient and even misleading when applied to the neoliberalism that grew out of the discussions that took place in the lead-up to the Walter Lippmann Colloquium and during the forum itself. This is because the label depicts neoliberalism as *negative* – a misconception that prevailed for far too long and obscured the fact that neoliberalism is about the *positive* exercise of power. We should not allow ourselves to be led astray by this benign notion that a neoliberal state is wedded to 'principled anti-interventionism' – that it intervenes only passively by systematically withdrawing from the economic sphere.[55] Quite apart from being an oxymoron, the notion of negative interventionism masks the essential point: the neoliberal state is *positively* interventionist, including in the economic sphere. Heller refers in his article to the Papen administration 'subsidising large banks, large industry and large agricultural enterprises', but this does not in itself justify the label neoliberalism.[56] Neoliberalism is not defined by government subsidies for large companies, any more than it is by austerity drives and deflationary policies.[57] Such policies existed in the 1920s, well before neoliberalism emerged, and were analysed by Karl Polanyi (though we should also be wary of blithely applying Polanyi's ideas on the 'disembeddedness' of the economy and turning the Hungarian political economist, whose focus was on the nineteenth century, into a visionary critic of neoliberalism).[58] If we look to the future instead of to the past, a survey of the initial experiments of neoliberal governments reveals that state interventionism was the rule, not the exception. Contrary to the prescriptions of Friedman, for example, the subsidiarity-type state of the Chilean junta was a formidably efficient interventionist state.[59] It is for this reason that the negative traits of authoritarian liberalism singled out by Heller (retreat, *Entstaatlichung*, *Abbau*) are of little help in understanding this novel political configuration. Specifically, they obscure the decisive role played by the law in providing the framework for the market order. It is in this particular form of legal interventionism that we find what Foucault aptly describes as the 'original armature of neo-liberalism'.[60] To echo Rougier, neoliberalism is an interventionist, 'positive liberalism' that cannot

be straitjacketed into the notion of a state that voluntarily retreats from exercising its power. But, as we have shown in this book, the idea of an active legal interventionism does not go far enough. Neoliberal interventionism is not merely economic or legal – it is social, political and cultural. In short, it is total in the sense that the civil wars of neoliberalism are. It encroaches upon the *whole* of society since its ambition is to usher in a *society* centred on competition.

More problematically still, the label of authoritarian liberalism does not account for what exactly is authoritarian about neoliberalism. For Heller, the adjective is appropriate in that it distinguishes the German national liberalism and the Manchester School liberalism of the nineteenth century from the German liberalism of the 1930s. But this is to imply that there was a time when the liberal state was *not* authoritarian in a systematic sense (beyond cracking down on vagabonds, the poor and other social outcasts). This might be true of the Manchester School, but it could not be said of German national liberalism, which never dared to be truly liberal. Heller's label only really makes sense if detached from this historical context: authoritarianism then applies to the state and liberalism essentially to the economy, along the lines of the Manchester model. But, to understand neoliberalism properly, we need to appreciate that political authoritarianism extends the logic of the economy to the state itself and to all social relations – meaning that neoliberalism is fundamentally authoritarian, albeit to different degrees.[61] If we trace its history from the outset, it becomes abundantly clear that *neoliberalism is, by its very nature, authoritarian*, and in this respect drawing parallels with nineteenth-century liberalism is deeply misguided. It now remains for us to explain in exactly what sense it is authoritarian, even when it does not impose itself through a dictatorship or authoritarian state.

Political authoritarianism and authoritarian regime

In recent years, various researchers have adopted Heller's term to explore the logic of the European Union.[62] This is certainly the right place to look – not to ensure the posterity of Heller's authoritarian liberalism, but in order to understand how political neoliberalism is intrinsically authoritarian. Its authoritarian dimension must be considered as distinct from classic *state*

authoritarianism, however, because a European state does not yet exist; and neither are the various European states authoritarian regimes, strictly speaking. But what we do find at the level of the European Union is a constitutionalization of the market, distilled in the form of community norms that for several decades have taken precedence over national laws.[63] The recipe is the same as the one formulated by Hayek: the sovereignty of private law, guaranteed by a strong authority. The sovereignty of private law has been enshrined in European treaties and the strong authorities invested with the task of protecting this sovereignty have assumed diverse but complementary forms, including the Court of Justice of the European Union, the European Central Bank, intergovernmental committees and the European Commission. According to the logic of authoritarian liberalism, an authoritarian state is needed if the state is to withdraw from the economic sphere. But when it comes to neoliberalism, it is the constitutionalization of the market (whatever form it takes) that requires a strong nation-state and/or decision-making mechanisms that are exempt from democratic oversight at the supranational level. This is the interpretative choice we are faced with, but first we have to be absolutely clear about our definitions. What is required is a reworking of the traditional category of authoritarianism as currently understood in political science and political philosophy circles. In these fields, it is generally used to denote a type of political system; in other words, authoritarianism is taken to refer to an authoritarian *regime*. This is notably the case for Hannah Arendt, who is at pains to stress the important 'technical-structural differences between authoritarian, tyrannical, and totalitarian governments', warning against locating them in a continuum as if there were only differences of degree.[64] Authoritarian regimes are characterized by a 'restriction of freedom', but this should not be confused with the 'abolition of political freedom in tyrannies and dictatorships' or the 'total elimination of spontaneity itself' in totalitarian regimes.[65] Categorizing political regimes in this way is 'unhistorical' and is rather concerned with how 'the modern world authority has disappeared' – authority to be understood here, with reference to the Romans' *auctoritas*, as being distinct from power (*potestas*).[66] Historians, for their part, make distinctions between dictatorial regimes – for instance, between Italian Fascism and Nazism, which attempt to 'completely control society' and 'format a new Man', and authoritarian, traditionalist and conservative regimes, such as Portugal under Salazar,

Spain under Franco, and Vichy France.[67] But the problem with these classifications is that they turn out to be inapplicable to neoliberalism. The fact that Hayek supported Salazar and Pinochet, or Friedman expressed his approval in 1997 for Britain's 'benevolent dictatorship' in Hong Kong, does not mean that all these regimes were neoliberal.[68] One option is to avoid such classifications and merely highlight instead the common tendency of authoritarian regimes to create an unlevel political playing field in rudimentary democracies and then systematically to constrict the plurality of voices in the political landscape.[69] But again, this characterization of authoritarian regimes is much too general to be helpful. How, for example, are we to distinguish between regimes where this tendency is evident and authoritarian regimes where there is no longer even a rudimentary democracy and political plurality has been eradicated? It also fails to take account of the diverse forms assumed by neoliberal governments.

The fundamental point is this: the exclusive focus on political regimes overlooks the fact that neoliberalism cannot be meaningfully defined in relation to *any specific political regime*. It may be opposed to the principles of traditional liberal democracy, but it expresses this opposition in many different political forms. To cite just two examples, the constitutions of the French Fifth Republic and the Federal Republic of Germany are significantly different and, indeed, have no obvious connection to neoliberal policies. By contrast (and this is what makes it a singular case), we could hardly divorce Chile's political regime from the 1980 constitution that gave birth to it. The way Röpke's views evolved in response to changing historical circumstances is instructive in this respect. As we have seen, he was an advocate of the strong state in early 1930s Germany and called for a dictatorial democracy in 1940, but we must acknowledge too that in 1942 he 'extrapolated from his newly beloved Switzerland to the scale of the global to imagine a world in which nation-states had the function of "cantons"', which is not exactly an authoritarian model. In the spring of 1945, his answer to the 'German question' in his book of the same title was 'the decentralization of the Bismarckian state into a federal structure'.[70] We therefore need to be alert to the potential ambiguity of the word authoritarianism. In Chapter 4, we employed the term 'state authoritarianism' in referring to an authoritarian *regime*. But following current usage, we could also talk of authoritarianism as the way a particular leader or an entire administration governs. We would then be describing an

approach that shuns consultation and tends to concentrate rather than delegate powers. An example would be Trump's partiality to executive orders (such as the so-called Muslim ban) and his racist, neoliberal authoritarianism, to cite the description of the French cultural historian Sylvie Laurent. Whichever way we use the term, however, the fact remains that it is possible to have a constitution like Brazil's, dating from 1988, and end up with an authoritarian president like Bolsonaro, just as it is possible to have a constitution like that of the United States and end up with a Trump presidency. The more liberal the constitution is in terms of the separation of powers, the more obstacles authoritarian leaders will encounter in seeing through their plans. But the possibility also exists that the president of a country with an anti-democratic constitution, such as the French Fifth Republic, can astutely exploit the options available to them and go much further in implementing the neoliberal policies initiated by their predecessors, or that another president will seek to amend the existing constitution to pave the way for an authoritarian regime. Such scenarios are ultimately a matter of history, politics and the balance of power. What does not change is the belief in the necessity of an economic constitution that can interconnect states, regardless of their political system. That is the crux of the authoritarian dimension to neoliberalism: the structure of the state can vary, and so too can the political personnel and their approach to governing, so long as governments are sufficiently strong to impose the constitutionalizing of private law and thereby restrict the scope of what can be debated. The error committed by those who fail to admit a necessary connection between neoliberalism and authoritarianism derives from conflating authoritarianism with authoritarian regimes.[71] While we can acknowledge that the authoritarian option (in the sense of an authoritarian regime) is one of many strategies entertained by neoliberal thinking and that others might include the devolving of state sovereignty, for example, it would be wrong to depict the Third Way neoliberalism of Clinton and Blair as non-authoritarian. In truth, it *was* in a sense authoritarian, even though it managed to attain its ends without recourse to an authoritarian regime.[72] Thatcher managed to do so too, despite Hayek urging her to adopt the Chilean example as a model.[73] When all is said and done, we need to make a distinction between three things: *authoritarianism as a political regime*, which can be defined as a certain type of relationship between the executive, legislative and judiciary; *neoliberal political authoritarianism*,

which is defined by policies that are not directly dependent on the nature of the existing regime (meaning that it can adapt to different political systems depending on its strategic priorities at a given time); and the *irreducibly authoritarian dimension to neoliberalism*, which expresses itself to varying degrees according to the opportunities afforded by the constitutional framework and the respective abilities of leaders to seize them to their advantage. This is, ultimately, a restatement of the argument that we have been making throughout this book: the basic glue that holds neoliberalism together is not its doctrine but the civil war *strategies* that it deploys.

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1 The philosopher Hermann Heller, who authored a book on legal theory, was a left-wing social democrat who, unlike Schmitt, defended the Weimar constitution during the 1932 Prussian coup when, on the initiative of Chancellor Papen, the legal government of the Free State of Prussia was replaced.

2 See Martin Jacques, 'The Death of Neoliberalism and the Crisis of Western Politics', *Guardian*, 21 August 2016; Cornel West, 'Goodbye, American Neoliberalism. A New Era Is Here', *Guardian*, 17 November 2016. Both cited in Thomas Biebricher, 'Neoliberalism and Authoritarianism', *Global Perspectives*, vol. 1, no. 1, February 2020.

3 See Ian Bruff, 'The Rise of Authoritarian Neoliberalism', *Rethinking Marxism*, vol. 26, no. 1, January 2014, pp. 113–29; Wendy Brown, Peter E. Gordon and Max Pensky, *Authoritarianism: Three Inquiries in Critical Theory*, University of Chicago Press, 2018, cited in Biebricher, 'Neoliberalism and Authoritarianism'. Biebricher's preferred term is authoritarianism.

4 Wendy Brown, 'Neoliberalism's Frankenstein: Authoritarian Freedom in Twenty-First Century "Democracies"', *Critical Times*, vol. 1, no. 1, April 2018, p. 33.

5 Enzo Traverso, *Le totalitarisme: Le XXe siècle en débat*, Le Seuil (Points essais), 2001, p. 128.

6 For a discussion of this possibility in the case of France, see Ugo Palheta, *La possibilité du fascisme: France, la trajectoire du désastre*, La Découverte (Cahiers libres), 2018.

7 See Robert O. Paxton, *The Anatomy of Fascism*, Alfred A. Knopf, 2004. See also Henry Giroux, 'Neoliberal Fascism and the Echoes of History', Truthdig, 2 August 2018.

8 Robert O. Paxton, 'Le régime de Trump est une ploutocratie', *Le Monde*, 6 March 2017.

9 See Emilio Gentile, *Storia del fascismo*, Editori Laterza, 2022.

10 Robert O. Paxton, 'I've Hesitated to Call Donald Trump a Fascist. Until Now', *Newsweek*, 11 January 2021.

11 Giovanni Gentile and Benito Mussolini, *The Doctrine of Fascism*, trans. Jane Soames, Vallecchi Editore, 1935, p. 21.

12 Ibid., p. 24.

13 Ibid.

14 Johann Chapoutot, *Fascisme, nazisme et régimes autoritaires en Europe (1918–1945)*, PUF (Quadrige), 2020, p. 94 (for the 1921 declaration) and p. 197 (for the 1938 text).

15 Ibid., p. 127.

16 Traverso, *Le totalitarisme*, p. 129.

17 Chapoutot, *Fascisme, nazisme et régimes autoritaires en Europe (1918–1945)*, pp. 204–5.

18 Ibid., p. 130.

19 Brown, 'Neoliberalism's Frankenstein', p. 34.

20 Although Chapoutot has shown that some Nazi jurists, such as Reinhard Höhn, did reflect extensively on the question of freedom in relation to managing the war economy, he stresses that this freedom only existed within a community of free actors 'whose very obedience made them free, for

in obeying the Führer they were obeying themselves and the purest, healthiest instinct of the Germanic race'. Johann Chapoutot, *Free to Obey: Management from Nazism to the Present Day*, trans. Stephen Rendall, Europa Compass, 2023.

21 Carl Schmitt, 'Strong State and Sound Economy', in Herman Heller, 'Authoritarian Liberalism?', trans. Bonnie Litschewski Paulson, Stanley L. Paulson and Alexander Somek, *European Law Journal*, vol. 21, no. 3, May 2015, pp. 298–9. See also Chapter 3 of this book.

22 In addition to this political current, which supported Bismarck, it is worth mentioning the nationalist theory of political economy developed by Friedrich List, known for his critique of Adam Smith and defending 'infant industry' protectionism, which was applied to the German economy.

23 Augustin Simard, *La loi désarmée: Carl Schmitt et la controverse légalité/légitimité sous la république de Weimar*, Presses de l'Université Laval/Maison des sciences de l'homme, 2009, p. 218.

24 A reference to Emperor Wilhelm I (1871–88) and his successors.

25 Simard, *La loi désarmée*, pp. 220–1.

26 Heller, 'Authoritarian Liberalism?', p. 299.

27 Olivier Beaud uses the term 'self-limiting' in citing Schmitt, who asserted in 1930 that the state demonstrates its power 'in the fact that it finds its own natural level'. Olivier Beaud, *Les derniers jours de Weimar. Carl Schmitt face à l'avènement du nazisme*, Descartes & Cie, 1997, p. 69, n. 57.

28 Heller, 'Authoritarian Liberalism?', pp. 299–300.

29 Ibid., p. 300.

30 Ibid.

31 Heller said of Schmitt: 'He recognises only a single "authoritarian" state, namely the fascist dictatorship as epitomised by Mussolini.' Ibid., p. 296.

32 Simard, *La loi désarmée*, pp. 140, 169. See also Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, Duncker & Humbolt, 2017 (1923).

33 Beaud, *Les derniers jours de Weimar*, pp. 114ff.

34 Ibid., pp. 239–40.

35 Ibid., p. 226.

36 Traverso, *Le totalitarisme*, pp. 146–50.

37 Ibid., p. 147. As Chapoutot stresses, whereas fascist totalitarianism is state-centred, Nazism is defined by a 'more instrumental relationship towards the state'. Chapoutot, *Fascisme, nazisme et régimes autoritaires en Europe*, p. 202.

38 Simard, *La loi désarmée*, p. 219.

39 Ibid., pp. 221–2. In a note on p. 221, Simard cites Renato Cristi, *Carl Schmitt and the Authoritarian Liberalism: Strong State, Free Economy*, University of Wales Press, 1998.

40 As Slobodian notes, the word 'neoliberalism' was coined by Louis Marlio, a French industrialist who attended the Walter Lippmann Colloquium. Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism*, Harvard University Press, 2018, p. 116.

41 'Address by Professor Louis Rougier', in Jurgen Reinhoudt and Serge Audier, *The Walter Lippmann Colloquium: The Birth of Neo-Liberalism*, Palgrave Macmillan, 2017, pp. 98–9.

42 Ibid., p. 99.

43 Ibid., p. 470.

44 See Chapter 3.

45 Carl Schmitt, 'Weiterentwicklung des totalen Staat in Deutschland' (1933), in *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles 1923–1939*, Duncker & Humblot, 1988, pp. 185–90. For the English translation, see Carl Schmitt, *Four Articles: 1931–1938*, trans. and ed. by Simona Draghici, Plutarch Press, 1999. It is worth noting that, as the title suggests, the subject is not the evolution *towards* the total state but *of* the total state (from weak total state to strong total state).

46 A point highlighted by Simard, *La loi désarmée*, p. 229.

47 Carl Schmitt, *Der Hüter der Verfassung*, Duncker & Humblot, 1931; Friedrich Hayek, *The Road to Serfdom*, Phoenix Books (University of Chicago Press), 1957 (1944), p. 178 – in this

footnote, Hayek quotes Schmitt's definition of the 'totalitarian state in which state and society are identical'.

48 Ibid., p. 187.

49 Friedrich Hayek, 'The Principles of a Liberal Social Order', *Il Politico*, vol. 31, no. 4, December 1966, p. 609. The German term for 'concrete order formation' is *konkretes Ordnungsdenken*, a reasoning in terms of a concrete order.

50 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, p. 71. We remarked on this total conception of law in Chapter 4 (see n. 29).

51 Carl Schmitt, *On the Three Types of Juristic Thought*, trans. Joseph W. Bendersky, Praeger Publishers, 2004. Hayek refers to this work by its German title: Hayek, *Law, Legislation and Liberty*, vol. 2, p. 161, n. 19.

52 Hayek, *Law, Legislation and Liberty*. For more on this conception of the law, see Chapters 2, 4 and 11, particularly the discussion of how Hayek borrowed Schmitt's distinction between the law (*Recht*) and legislation (*Gesetz*), only to turn it against him.

53 Schmitt, *On the Three Types of Juristic Thought*, pp. 53–4.

54 Ibid., p. 54.

55 See Pierre Dardot and Christian Laval, *The New Way of the World: On Neo-Liberal Society*, trans. Gregory Elliott, Verso, 2010, p. 2.

56 Heller, 'Authoritarian Liberalism?', p. 300.

57 Contrary to what Grégoire Chamayou seems to believe – see '1932, naissance du libéralisme autoritaire', in Hermann Heller and Carl Schmitt, *Du libéralisme autoritaire*, La Découverte, 2020, pp. 71–2.

58 Slobodian warns against this tendency in *Globalists*, p. 16. See also Naomi Klein, who cites *The Great Transformation* in the epigraph to the first part of *The Shock Doctrine: The Rise of Disaster Capitalism* (Metropolitan Books/Henry Holt, 2007).

59 See Chapter 1.

60 Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, Palgrave Macmillan, 2010, p. 150.

61 This is what Leonhard Miksch means by his pithy and striking remark about 'state-organized competition' (see Introduction, n. 21).

62 Slobodian (*Globalists*, p. 296, n. 61) cites the May 2015 special issue of the *European Law Journal* devoted to Heller's authoritarian liberalism. He refers in the same note to: Werner Bonefeld, 'Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro', *Critical Sociology*, vol. 43, nos 4 & 5, July 2017, pp. 747–61; Christian Joerges, 'What Is Left of the European Economic Constitution?', *SSRN*, vol. 20, no. 3, November 2004; Michael A. Wilkinson, 'The Specter of Authoritarian Liberalism: Reflections on the Constitutional Crisis of the European Union', *German Law Journal*, vol. 14, no. 5, 2013, pp. 527–60.

63 On this fundamental notion, see Chapter 4.

64 Hannah Arendt, 'What Is Authority', in *Between Past and Future*, Viking Press, 1961, p. 98.

65 Ibid., pp. 675–6.

66 Ibid., pp. 103–4.

67 Chapoutot, *Fascisme, nazisme et régimes autoritaires en Europe*, p. 249.

68 See Biebricher, 'Neoliberalism and Authoritarianism'.

69 Steven Levitsky and Lucan Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War*, Cambridge University Press, 2012.

70 Slobodian, *Globalists*, p. 113.

71 An error Biebricher makes in 'Neoliberalism and Authoritarianism', pp. 10, 15 and 2.

72 See Chapters 7 and 8.

73 See Chapter 1.

Conclusion: From Civil War to Revolution

In the course of this survey, it has become clear that there is no easy consensus among analysts on the defining traits of contemporary neoliberalism's authoritarian dimension. As we noted in the introduction, to interpret these traits as symptoms of a crisis of neoliberalism or evidence of a discredited model is to suppose that there was a point in history when, as a doctrine or in its application by governments, neoliberalism was founded upon the principle of democratic consent. But what has characterized neoliberalism from the outset is the remarkably consistent way in which it has combined a certain number of essential traits: the challenging of social security and redistribution policies, an anti-democratic spirit, the strong state, violence against the so-called enemies of freedom, and the constitutionalizing of market principles and competition – sometimes (though not always) underpinned by the conservative values of family, religion and a strong moral order. Ultimately, the point is not to attempt to categorize neoliberalism – whether as 'authoritarian', as 'actually existing' or as 'mutant'.[1] Our goal is instead to analyse what neoliberalism *does* and how it succeeds by reframing the terms of the conflict, winning over part of the population to authoritarianism or, alternatively, tapping into the 'progressive' aspirations of another part, but always stripping back workers' rights and undermining social solidarity and equality ever further as it does so. In this book, we have sought to focus on strategy precisely because a defining characteristic of neoliberal governance is the diversity of civil war tactics that it deploys.

Neoliberalism and civil war

Foucault's idea of using civil war as a framework for analysing 'established power' turns out to be particularly fertile.[2] But how does neoliberalism conceptualize its own role in a civil war? There are two components to this. First, it appropriates the classic notion of sovereignty to justify the exercise of power for the purposes of putting an end to the civil war between competing individual interests. When Hayek discusses the genesis of constitutional principles, for example, he argues that these are 'principles whose infringement would revive sectional conflict or even civil war'.[3] Mises, for his part, asserts that liberalism rules out civil war: 'To be a liberal is to have realized that a special privilege conceded to a small group to the disadvantage of others cannot, in the long run, be preserved without a fight (civil war).'[4] Whereas the 'antiliberal parties' stoke civil tensions because they seek to secure privileges for some social groups at the expense of others, the fact that liberalism 'serves no special interest' precludes any form of domestic conflict. It is thus being used in a very specific sense here to denote rivalry between different vested interests, not least class interests. Indeed, a consistent leitmotiv of neoliberalism is to reframe the class struggle as a civil war and to situate the neoliberal state above these vested interests: 'Once politics becomes a tug-of-war for shares in the income pie, decent government is impossible.'[5] In a similar vein, the German ordoliberals couch the conflict of vested interests in the vocabulary of barbarian pillaging: national budgets are the 'prey' (Rüstow) at the mercy of 'the hungry hordes of vested interests' who 'plunder the state' (Röpke).[6] Taking up the old motif of the 'injured sovereign', the neoliberal state is presented as the guarantor of the only form of justice that matters – that which protects the market.[7] This, then, is the first component: the binary opposition of civil war versus sovereign state is reframed in economic terms as an opposition between a social war of vested interests and a sovereign state dispensing economic justice according to market principles. This approach conceives the class struggle as a civil war within society, and it is the state's role to quell this civil war.[8]

But there is a second component to this quelling of civil war which involves, by contrast, embracing the offensive against enemies of the market and those of the state, which is its guarantor. The inner socialist dormant in every proletarian is the very essence of the social enemy and

barbarian, and he or she must be neutralized. Remarking on the ‘proletarianization’ of the masses in Germany, Röpke asserts that a ‘nation may beget its own barbarian invaders’.[9] Mises, meanwhile, warned of the masses being seduced by the ‘slogan of Socialism’ with the result that ‘we must inevitably drift on to chaos and misery, the darkness of barbarism and annihilation’.[10] Vanquishing socialists was not about dealing with political adversaries but with criminals and enemies of civilization.[11] For Mises, the state ‘employs its power to beat people into submission solely for the prevention of actions destructive to the preservation and the smooth operation of the market economy. It protects the individual’s life, health, and property against violent or fraudulent aggression on the part of domestic gangsters and external foes.’[12] Neoliberalism transfers this eighteenth-century discourse to the proletarian, a public enemy who ‘breaks the social pact binding him to others and goes to war against his own society’ and requires a ‘measure of protection, of counter-war that society takes against the criminal’.[13] There is more than a hint of social Darwinism in the application of this discourse to the market economy as a means of defining the enemy, as well as a hint of state racism. Protecting oneself from one’s enemies entails redefining them economically – it is no longer a case of defending the ‘race’ but of normalizing society through a healthy economy and protecting it against the threats of democracy and proletarianization.[14]

The strategies of the neoliberal civil war

The history of neoliberalism in the twentieth and twenty-first centuries is thus to be understood as a history of neoliberal civil war strategies against the various manifestations of the socialist enemy, whether that be central planning, collectivism, trade unionism, popular sovereignty or democratization, all of which threaten to constrain the economy in the name of social demands and democratic expression.

In the 1930s, the concepts of the strong state, economic constitution and competitive order were explicitly elaborated to conceive of a state capable of neutralizing any attempt to politicize the economy. At that time, the direct enemy was the proletarian or trade unionist, and neoliberalism’s objective in intervening in the legal domain was to establish laws of

competition designed to exclude pressure from vested interests. From the 1940s onwards, much thought was given to the international economic order, and in the wake of the Second World War international institutions were lobbied hard with a view to preventing socialist governments from implementing policies of economic nationalism.[15] Then, in the 1960s, there was a concerted moral backlash against the emergence of new social attitudes, with the idea of family values returning to the fore in the United States and a shift away from social redistribution to the idea of families acting privately out of a charitable and compassionate vision of economic solidarity.[16] The class alliance on which consensus for the welfare state rested was thus progressively eroded by a culture war which led one section of the population to embrace conservative values and another, seduced by Third Way neoliberalism, to subscribe to progressive values. More recently, additional enemies have been identified, including the globalist technocrat, the Muslim terrorist and the migrant, enabling the deployment of a new neoliberal strategy centred around nationalism and competition.

In noting these strategic developments, it becomes clear that state violence, authoritarianism and brutality are not the salient novelties of today's neoliberalism. In interpreting the recent transformation of neoliberalism as a drift towards authoritarianism, there is a danger of overlooking the true strategic innovations on which its contemporary domination is founded. These fall into two broad categories and are closely intertwined. On the one hand, there is the Janus-like character of neoliberalism encompassing a more-or-less progressive globalism that promises self-realization and respects individual differences along with a reactionary nationalism that defends a conception of freedom associated with a national identity in the face of minority social demands and their success in having their rights legally recognized. On the other, there is the drive to divide the population through culture wars fuelled by two very different conceptions of freedom, with each camp blaming the other for the ills of contemporary society across a seemingly unbridgeable divide.[17] Contemporary neoliberalism has thereby developed a formidable capacity to saturate the political space and stifle any genuine grassroots alternative, giving a whole new complexion to Catherine de' Medici's motto: *divide ut regnes* (divide and rule).

The decisive difference between the neoliberalism of its founders and its contemporary forms is the way in which the latter have made themselves

attractive to entire swathes of the population and certain segments of the working classes, whereas in the interwar period the neoliberal project presented itself more as a revolt of the elites against the masses who purportedly posed a threat to civilization. There has thus been a shift from a paranoid fear of the masses to a more cynical seduction of the population, neoliberalism having itself been instrumental in deepening the mutual distrust between the masses and the elites. This turning of a part of the population against its own best interests by manufacturing domestic and foreign scapegoats and exacerbating nationalist sentiment has the merit of shifting the conflict onto the battleground of values and in the process neutralizing popular anger.

The economy is not our destiny

The challenge lies in the fact that in its two predominant forms (globalist and nationalist), neoliberalism has consistently sought to conceal its profoundly strategic dimension. Though it has from the outset been defined by its political strategies, it has always cast its policies not as a matter of choice (and, therefore, in principle reversible) but of necessity (those same policies being moreover designed to be irreversible). Right from the start, it has strategically cloaked its intentions in a veil of inevitability, or even destiny, to convey the impression that there is no choice in the matter. This is why the first task of critical appraisal should be to expose the deliberate choices and decisions that have been at play all along. It is worth recalling here a famous phrase uttered on 11 November 1965 in Bonn by Chancellor Ludwig Erhard, a staunch ordoliberal, during a two-hour government statement. When he reached the economic section of his address, he chose to cite Walther Rathenau, who served as minister of reconstruction and then foreign affairs in the Weimar Republic from 1921 to 1922 when he was assassinated by young far-right German nationalists. Explaining that monetary and financial stability was key to releasing Germany's potential, Erhard stated: 'The economy is our destiny.'[18] His reference to the liberal politician may have come as a surprise to audience members who were aware of Rathenau's poor posthumous reputation among the ordoliberals on account of his centralized approach and his economic planning. Röpke, for example, had accused Rathenau of 'eternal Saint-Simonism' and an

obsession with the planned economy, writing him off as a 'technocrat'.[19] But when Erhard appropriated the phrase in 1965, he gave it a meaning it could not have had in the early 1920s: a statement of ordoliberal faith that the economy was Germany's destiny, monetary and financial stability being the bedrock of the state's prosperity and legitimacy. Back in February 1948, as economic administrator of the Anglo-American zone, Erhard was already experimenting with lifting price controls, which he saw as consistent with the 'principle according to which interventions by the state should generally be limited'.[20] As chancellor, his mention of Rathenau was intended to emphasize that the survival of the German state depended on continuing down the market-economy path, which had proved its worth and to which Germany owed its current strength. In other words, ordoliberal *politics* is our destiny, but it is dressed up as an economic imperative whose natural logic it would be futile to defy. The message is that the market cannot be resisted.

Ever since the late 1920s, Rathenau's phrase has been subject to various interpretations. In *The Concept of the Political* (1932), Carl Schmitt cites the 'often quoted phrase by Walter Rathenau, namely that the destiny today is not politics but economics', and develops a polemical argument regarding 'depoliticalized' liberal concepts that

> typically move between ethics (intellectuality) and economics (trade). From this polarity they attempt to annihilate the political as a domain of conquering power and repression. The concept of private law serves as a lever and the notion of private property forms the center of the globe, whose poles – ethics and economics – are only the contrasting emissions from this central point.[21]

Schmitt, by contrast, argues that the economy has only become our destiny because it has become political: 'It would be more exact to say that politics continues to remain the destiny, but what has occurred is that economics has become political and thereby the destiny.'[22] It is worth highlighting the assertion that politics 'continues to remain' our destiny, which would seem to be at odds with Erhard's claim that economics is our destiny. But might the attachment of both men to the word 'destiny' not betray a secret complicity beneath the apparent contradiction?

Politics is an anti-destiny

When they met in Erfurt on 2 October 1808, Napoleon is reported to have said to Goethe: ‘Why do they keep talking about destiny? Destiny is politics.’[23] The German writer recalled their encounter in 1832: ‘We talked of the tragic idea of Destiny among the Greeks . . . It is better for us moderns to say with Napoleon, “Politics are Destiny”.’[24] Greek tragedy depicts a pre-political world. Destiny is personified in the terrible figure of the Eumenides, the goddesses of revenge who ensured that the grand aristocratic families paid in kind for spilled blood. In this respect, classical tragedy offered a countermodel to the city of equals: the establishing of equality between citizens and their direct participation in political decision-making can be seen as a form of *anti*-destiny.[25] The modern state, however, does not rest on this kind of participation but on an opposition between the private owner and the citizen. It is thus in the form of an abstract state, separated from society, that politics becomes the destiny of the bourgeoisie, which is to say simultaneously that which it opposes and that which it cannot do without.[26] From Schmitt’s perspective, what defines the nineteenth century is ‘the turning toward economics [which] was decided by the victory of industrial society. The year of this victory, 1814, was the year in which England had triumphed over the military imperialism of Napoleon.’[27] But, contrary to what liberal thinkers assert, this transformation of the economy (‘the autonomous, so-called politically neutral economic domain’) is interpreted by Schmitt as a continuous process whereby the ‘hitherto nonpolitical or pure matter of fact now turns political’.[28] It is a historical irony that Napoleon’s own fate bore out his observation to Goethe: defeated by the economic might of England, politics was indeed his destiny. Ultimately, the politicizing of the economy is to be understood not as economics becoming our new destiny, but that politics ‘continues to remain’ our destiny by extending its reach to the economy.

Already in 1939, the political analyst Hans Kohn was noting a seemingly stark opposition:

> Walther Rathenau, the famous German industrialist and statesman, had pronounced economics to determine our fate. ‘Wirtschaft ist Schicksal’. In this attitude the two great currents of the later nineteenth century, liberal capitalism and socialism, had agreed. Now they are confronted with the proclamation of the precedence of politics over economics. ‘Politik ist Schicksal’, affirms Carl Schmitt.[29]

If we characterize this opposition from Chancellor Erhard's viewpoint, the terms of the equation become, on the one side, orthodox ordoliberalism (which elevates the economy to the status of destiny to disguise its choices as non-choices and thereby preclude any alternative economic policies) and, on the other, conservative statism which persists in ensuring that politics and state are our destiny (to preclude the emergence of a non-state politics). In short, whether our destiny be political or economic, the point is to disqualify any potential alternative by asserting that it is impossible. In both scenarios, a decision is surreptitiously presented as a necessity: in the case of ordoliberalism, a pre-emptive decision in favour of competition and the market economy; and in the case of Schmitt a pre-emptive decision involving the identification of the enemy (which is supposedly the basis of political dealings). In both cases, this arbitrary decision forms the cornerstone of the economic or political order, which neoliberals themselves describe in Schmittian terms as a 'fundamental decision' and a 'comprehensive decision concerning the nature and form of the political unit'.[30] This is germane to the authoritarian dimension of neoliberalism discussed in the last chapter: the objective is to restrict in advance the field of political debate through a decision that is not the fruit of collective deliberation but nevertheless affects the collectivity as a whole. The argument goes that one cannot debate destiny or necessity, only what is in practice possible. If a destiny necessarily awaits us, any deliberation on the subject is pointless. It is especially important to stress that globalization has invested the notion of economic destiny with an additional persuasiveness: it is now the global market that appears to dictate our economic policies, including at the national level. At the same time, as we have shown, this state of affairs requires a strong state or at the very least policies that are sufficiently coercive to remove the economic domain from the field of political debate. If 'there is no alternative', to echo a slogan embraced by Thatcher, political deliberation becomes a hollow, *anti*-destiny exercise. The priority of any alternative must therefore be to broaden once again the field of possible political debate, centred on the commons (assuming that this is the proper subject of political deliberation).[31]

The revolution against the civil war

What is at stake is just as much our relationship to the state as to the economy and our starting assumption is this: neither the state nor the economy is a matter of destiny. State sovereignty is the cornerstone of a competition-centred society and it would be naive to oppose the latter without tackling the former. Experience has taught us, however, to avoid the suicidal strategy of turning the adversary's own arms against it. The state should not be regarded as a weapon at the disposal of the subjugated classes. Only a radically non-state approach – the principle of the commons – can help us to escape the domination of the market and the state.

Once again, the Paris Commune is enlightening. In a first draft of *The Civil War in France* (1871), Karl Marx described events as a 'revolution against the *State* itself'.[32] As we saw at the beginning of this book, there was debate among the Communards as to whether they were waging a traditional war against Versailles (which prompted Gustave Courbet to suggest that the Communards be granted the status of belligerents) or a civil war, which implied a symmetry between the protagonists and was therefore not an ordinary war. But the Commune as a whole refused to frame the question in these terms, preferring to speak of the Revolution of 18 March rather than a civil war.[33] Indeed, it was a point of honour to reject the accusation of fomenting a civil war that was constantly levelled against it by Versailles. The poster signed by Adolphe Thiers, which was put up in Paris on the morning of 18 March 1871 and announced his government's intention to seize the artillery of the National Guard, referred to 'criminals' bent on a civil war after the foreign war and issued the following appeal: 'May decent citizens distance themselves from the ill-intentioned and *assist* the forces of law and order rather than resisting them.' As the Communard Gustave Lefrançais observed, this was a 'direct appeal for the civil war that the signatories claimed to want to avoid'.[34] For the Commune, then, talk of a civil war came exclusively from the Versailles camp – the war against Paris was a war waged by Versailles against the Commune. As Nicole Loraux rightly points out, the Commune never adopted the language of civil war for itself; it simply acknowledged a situation for which it held Versailles responsible, soberly citing the civil war circumstances into which the Commune had been drawn. On 24 May 1871, in the midst of Bloody Week, the Central Committee of the National Guard solemnly declared: 'We have battled against a sole enemy: civil war.'[35] On 19 May, it had already declared itself to be 'the standard-bearer of the Revolution of the

Commune' and 'the armed enemy of the civil war'.[36] The Communards thus refused to accept civil war as their destiny, resisting the 'conspiracy of the ruling class to break down the revolution by a civil war', in the words of Marx.[37] By rejecting the notion of symmetry between the opposing camps, they were insisting on the *revolutionary* nature of their undertaking – as Loraux succinctly puts it: 'The Commune was genuinely a *revolution against civil war*.'[38] The fact that this revolution failed does nothing to diminish its huge political impact. The approach of the commons should resolutely embrace this conflictual dimension (including in the form of physical confrontation if necessary), but only to avert more effectively the trap of civil war. The notion of a 'revolution against civil war' offers a neat encapsulation of the political strategy that needs to be adopted against a state policy that promotes the economy as destiny. The example of Chile is proof that only popular revolutions – revolutions spearheaded and steered by citizens – can stand up to neoliberalism's civil war strategies.

How to respond to the neoliberal civil war?

How is it possible to fight an adversary that denies its strategic dimension, and how can an anti-destiny politics be reinstated? In other words, how is it possible to defeat these neoliberal civil war strategies that are cleverly disguised as something else? The battle against neoliberalism's civil war calls for a fresh coalescing of various grassroots groups around a project centred on the very things that the neoliberals have from the outset made it their mission to destroy: equality, solidarity and emancipation. But to develop such a project, it is important first to elaborate a critique of the political propositions of the left.

Left-wing governments have failed, pure and simple: not only have they refused to respond to the neoliberal war; they have actively supported it. Admittedly, those who have demonstrated a certain cultural or social liberalism should not be put in the same basket as the most reactionary. But the focus on strictly individual rights has in no way compensated for the abandonment of policies for social and economic equality that favour the working classes. Considering their track record, we need to be very wary of what the old political structures may do next, from Joe Biden's so-called

centrist Democratic Party to Europe's supposedly progressive social democrats.

A relatively well-developed strategic response calling itself *left populism* has sought to construct a people by highlighting the common points of diverse democratic demands. Formulated theoretically by Ernesto Laclau and Chantal Mouffe, it aims to constitute a national people against the globalized elites who have dispossessed it of its sovereignty. The idea has been elaborated as a sort of mirror image of the kind of right-wing populism that Thatcher practised.[39] The objective is to envision a national community and sovereign state, just as the right has so successfully done, but this time, to combat capitalist globalization and the neoliberalism of the European Union. Seeking to replicate in very different contexts (not least Europe) the populism of Latin America and especially the example of Peronism in Argentina, this left populism soon ran into problems with the fragmented nature of political and union structures, the autonomous power of social and industrial protests and the sheer plurality of popular causes. Appropriating the rhetoric of people, nation and republic against the neoliberal elites has turned out not to be the magic wand that would persuade the population to unify into a new people. This left populism has ultimately mutated into traditional parliamentary politics. What conclusions should we draw from this? That *the* people cannot be unified through the symbolic appeal of a leader emanating from some mysterious transcendent realm who is somehow in tune with the popular will. The mistake is to imagine that identifying with such a leader will mend the rifts created by turning the people against themselves and artificially create a harmonious whole. Because it operates on centralist assumptions and has the conquest of the extant state as its primary political objective, left populism is ultimately incapable of dislodging the ruling classes, since it fails to address in practical terms the problem of the state itself. It is still less capable of conceiving democracy as something that can be extended to every walk of life.

Another solution is preferred by certain segments of the radical far left: responding to the neoliberal war through insurrection and violent rioting – in other words, waging a symmetrical war in the Blanquist tradition. In attacking pseudo-symbols, groups of young autonomists and black blocs self-identify as the barbarian enemy and provide a pretext for the state to curtail civil liberties in the name of security. In short, they situate

themselves where the state they are combating would like them to be. The effect on popular mobilizations is consistently disastrous. There is a basic doctrine behind this approach – an ideal of eliminating all intermediary institutional structures in favour of direct dealings between individuals. Contrary to the facile assertions of Agamben and his disciples, genuine autonomy (self-government) is to be achieved through *creating* institutions, as the Paris Commune amply demonstrated. It is not the dismantling but the *creation* of institutions that can generate afresh the conditions for democratic participation in social and political activities and experimentation with original forms of collective self-government.

What still needs to be thought through are the requirements for an effective *anti–civil war* revolution under the present circumstances. What might this look like? Certain archaic forms of the political struggle will doubtless have to be consigned to history. The sociological and subjective conditions for a single party structured according to a vertical hierarchy and for centralized unions – modelled on the state and capitalist companies – no longer obtain. The conflict in society can no longer be reduced to the antagonism between two classes, though this is not to say that social conflict over the distribution of wealth no longer exists. On the contrary, the direct and indirect exploitation of labour has extended well beyond the factories associated with the early phases of capitalism. The class struggle has become more complex and multidimensional and now also encompasses different antagonisms of gender, race, culture and religion. Given that a universal party or a single emancipation cause is no longer conceivable, we need to envisage new connections between diverse collective entities that provide space for professional needs and productive experiments and structures for mobilization and political institutions, such as parties, associations, communes, unions, assemblies, cooperatives and the commons. There is no denying the archipelago-like nature of this broad constituency. But just as an actual archipelago rests on a volcanic base that structures the connections between the islands, the social struggle is knitted together by shared egalitarian and democratic principles of organization that can be translated into a common project to create an egalitarian society that is genuinely democratic, from the grassroots up.

A strategy centred on equality and democracy

The central axes of the response to the neoliberal war should be equality and democratic self-government. A significant proportion of the working classes and people living in the countryside and small towns have given up on left-wing governments because they feel abandoned by parties that view the class struggle and working-class culture as old-hat fixations. This brand of left-wing politics has contributed, along with the marked tendency to restructure the workplace and promote individualistic consumerism, to 'undo the *demos*'.[40] To counter current efforts to divide the people through culture wars, a new (and hopefully imminent) left should strive to ensure that a demand for equality underpins *every* struggle, be it economic or cultural. Indeed, no separation should be made between the general combat for economic and social equality and the more specific struggles relating to the rights of women, ethnic and sexual minorities, different age groups and so forth. This is by no means to deny the specific characteristics of these causes, but these differences should not be allowed to compromise the unity we need if we are to fight the various forms of neoliberalism. In other words, an excessive attachment to identity questions, whether it be to minority identities (which the so-called progressive brand of neoliberalism seizes on to capture a new voter base) or majority identities (which the reactionary neoliberals embrace in appealing to traditional values) should be avoided. This leaves only one viable strategic path: to frame all demands in all domains in terms of equality first and foremost, whether the issue at hand is civic rights, socio-economic standards of living, access to public services or equal and direct participation in public affairs. It would be wrong to divide the struggle into economic questions on the one hand and cultural causes on the other – these should all be viewed as social struggles for equality.

The role of the new left will not be to unify these demands from above or from the outside with arbitrary floating signifiers, but rather to help weave transverse connections between them. To nurture alliances between trade unionists, ecologists, alter-globalists, feminists and anti-racism campaigners, it will be essential to include activists in each specific domain and encourage them to recognize the legitimacy of all the other causes, but above all it will be necessary to establish tangible links between these many dimensions of the struggle for equality.

Democracy, in this context, means self-government extended to all activities, institutions and relationships, which must be regulated by laws

and rules decided collectively. By this definition, democracy is nothing but the general form of the political bond between equals, who are conscious of and responsible for the common interest on both a small and a large scale. A democratic society of this kind need not be perfectly harmonious or even founded on consensus. Conflict is not an unfortunate by-product but an essential component of genuine democracy – disagreements are voiced, acknowledged and debated. They are settled neither by material or symbolic power relations, nor by the dead weight of custom, as is the case in capitalist, patriarchal and religious systems. Conflicts are resolved within the framework of institutions whose rules are also the fruit of collective deliberation and decision-making. Civil liberties and personal freedom are the non-negotiable touchstones, as is full equality between the members of a society – absolute equality in terms of rights, of course, but also social, intellectual and economic equality in the highest degree. The end (or necessary element of utopia, if you will) is inseparable from the means, namely the political involvement of one and all in the reflections, debates and decisions on collective rules.

Such a society does not come into being overnight following a sudden insurrection. It is something that is constructed through collective action and experimentation in the face of everything that stifles the freedom of people to exercise their rights to the full. We must fight to remove all the obstacles that prevent democratic political activity – and there are many: socio-economic and cultural inequalities; the toxic rivalries of parties in hock to the oligarchs; parliamentarianism and cynical electioneering that claim to exhaust the possibilities of democracy but in fact sap politics of its vitality; the false solutions of nationalism and sovereignty (an inept encroachment on the natural terrain of the far right); the siloing of political, social, environmental and cultural questions into specialized domains monopolized by experts; the racism and social elitism that ensures that positions of responsibility continue to be entrusted to the privileged by birth; and, last but by no means least, men’s monopolizing of power over the collective sphere to the detriment of women’s right to deliberate and decide on an equal footing.

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1 Bob Jessop, ‘Authoritarian Neoliberalism: Periodization and Critique’, *South Atlantic Quarterly*, vol. 118, no. 2, April 2019, pp. 343–61; Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West*, Columbia University Press, 2019, pp. 108–15; William Callison

and Zachary Manfredi, eds, *Mutant Neoliberalism: Market Rule and Political Rupture*, Fordham University Press, 2019.

2 Michel Foucault, *On the Punitive Society: Lectures at the Collège de France 1972–1973*, trans. Graham Burchell, Palgrave Macmillan, 2015, p. 31.

3 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge Classics, 2013, vol. 1, p. 134.

4 Ludwig von Mises, *Liberalism: In the Classical Tradition*, Mises Institute, 2018 (1927), p. 187.

5 Hayek, *Law, Legislation and Liberty*, vol. 3, p. 150.

6 Alexander Rüstow, *Rede und Antwort*, Hoch, 1963, cited in Werner Bonefeld, *The Strong State and the Free Economy*, Rowman & Littlefield, 2017, p. 37; Wilhelm Röpke, *Die Religion der Marktwirtschaft*, LIT, 2009, cited in Bonefeld, *The Strong State and the Free Economy*, pp. 21 and 62.

7 Foucault, *On the Punitive Society*, p. 34.

8 Mises associates Marx with civil war: 'Marx tried to organize a political party which by means of revolution and civil war should accomplish the transition from capitalism to socialism.' Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane, Liberty Fund, 1981 (1922), p. 544.

9 Wilhelm Röpke, *International Economic Disintegration*, William Hodge & Company, 1942, p. 241.

10 Mises, *Socialism*, p. 23.

11 See Chapter 5.

12 For a survey of the various positions, see Mises, *Human Action: A Treatise on Economics*, Mises Institute, 1998 (1949), p. 258.

13 Foucault, *On the Punitive Society*, pp. 32–3.

14 Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France 1976*, trans. David Macen, Picador, 2003; Wilhelm Röpke, *The Social Crisis of Our Time*, trans. Annette and Peter Schiffer Jacobsohn, University of Chicago Press, 1950.

15 See Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism*, Harvard University Press, 2018, ch. 3.

16 James M. Buchanan describes the awakening of his political consciousness in the 1960s as follows: 'I had observed the eruption of anarchy in the universities, from afar in the middle 1960s, and from close-up at UCLA in 1968. I sensed an urge to stand and fight, to do battle in the quads, as I saw rules and conventions that embodied capital value fall undefended before the new barbarians.' See James M. Buchanan, *Economics from the Outside In: 'Better than Plowing and Beyond'*, Texas A&M University Press, 2007, p. 115.

17 See Chapter 8.

18 This phrase was used in a speech by Rathenau to German industrialists in Munich on 28 September 1921.

19 Wilhelm Röpke, *Civitas humana: A Humane Order of Society*, trans. Cyril Spencer Fox, William Hodge & Co., 1948, quoted in Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, Palgrave Macmillan, 2010, p. 79, n. 1.

20 See Foucault, *The Birth of Biopolitics*, p. 81.

21 Carl Schmitt, *The Concept of the Political*, trans. George Schwab, University of Chicago Press, 2007 (1932), pp. 78 and 71.

22 Ibid.

23 Ibid., p. 125.

24 Johann Wolfgang von Goethe, *Conversations with Eckermann, 1823–1832*, Viking Press, p. 343.

25 Vincent Azoulay and Paulin Ismard, *Athens, 403 BC*, trans. Lorna Coing, Cambridge University Press, 2025.

26 In German, the word *Bürger* means both bourgeois and citizen, which can imply an inner opposition within the individual, as is the case in Hegel. Indeed, Schmitt credits the German philosopher with offering 'the first polemically political definition of the bourgeois. The bourgeois is an individual who does not want to leave the apolitical riskless private sphere.' Schmitt, *The Concept of the Political*, p. 62.

27 Ibid., p. 74.

28 Ibid., p. 62.

29 Hans Kohn, 'The Totalitarian Philosophy of War', *Proceedings of the American Philosophical Society*, vol. 82, no. 1, *Le XXe siècle en débat*, Seuil (Points essais), 2001, p. 344.

30 Slobodian, *Globalists*, p. 211.

31 See Haud Guéguen, 'La délibérabilité du Commun: commun et délibération chez Aristote', in Christian Laval, Pierre Sauvêtre and Ferhat Taylan, eds, *L'alternative du commun*, Hermann (Les colloques CERISY), 2019, pp. 379–93.

32 Karl Marx, *The Civil War in France*, Foreign Language Press, 2021, p. 158.

33 On 28 March 1871, the Central Committee of the National Guard submitted a letter to the delegates of Toulouse in which it stated: 'Paris has set the course for the future by resisting the provocations of the government, whose only hope lay in a civil war. It wished to prove that true strength was in peaceful revolution and that the people was powerful enough to annihilate its armed attackers solely through the majesty of its attitude.' Central Committee of the National Guard, 28 March 1871, in the *Journal officiel de la République française sous la Commune du 19 mars au 24 mai 1871*, Victor Bunel, 1871, p. 102.

34 Gustave Lefrançais, Étude sur le mouvement communaliste. Suivi de *'La Commune et la Révolution*', Klincksieck (Critique de la politique), 2018 (1871), p. 98.

35 Georges Bourgin and Gabriel Henriot, eds, *Procès-verbaux de la Commune de 1871*, E. Leroux, 1945, vol. 2, p. 522, cited in Nicole Loraux, *La tragédie d'Athènes. La politique entre l'ombre et l'utopie*, Le Seuil (La librairie du XXIe siècle), 2005, p. 48.

36 Central Committee of the National Guard, 19 May 1871, p. 615.

37 Marx, *The Civil War in France*, p. 89.

38 Loraux, *La tragédie d'Athènes*, p. 50.

39 Chantal Mouffe, *For a Left Populism*, Verso, 2019, p. 52.

40 Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution*, Princeton University Press, 2015.

Index

Abelshauser, Werner 66
abortion 152
Abs, Hermann Josef 136
academic freedom, attacks on 155–6
Academy for German Law 65
AfD 146
Agamben, Giorgio 197, 244
Algeria 191
Alianza Democrática (Democratic Alliance) 31
alt-right, the 151
Alvim, Roberto 155–6
American Civil War 1
Amnesty International 195
anger, channelling 8
anti-civil war revolution 244–5
anti-interventionism 224
Arendt, Hannah 6, 227
Argentina 34–5, 203, 243
Aron, Raymond 43
asymmetric wars 6
Atria, Fernando 29
Austria 66–72
Austrian-American school 220
Austromarxists 92
authoritarian liberalism 208, 209
authoritarian regimes 227–30
authoritarianism 208–9
    arguments for 55–7, 58
    authoritarian liberalism 54, 208, 209, 215–19, 225, 226–7
    connection with neoliberalism 53–4
    European Union 226
    and the law 193
    need for 53–4

neoliberal fascism 209–15
neoliberalism 208–9, 224–6, 229–32, 235–6
political 225–6, 226–30
as a political regime 230
role of law in 219–23
state 86, 164, 226, 228–9
violence 54
autonomists 244
backward-looking utopia 113–16
Bannon, Steve 8, 144
barbarian regression 127
Bauer, Otto 92
Beard, Charles 75, 88–9
Beaud, Olivier 55–6
Becker, Gary 11, 153–4, 174
Bell, Daniel 150
Bentham, Jeremy 59–60
Berlusconi, Silvio 147
bicameral system 79–80
Biden, Joe 147, 243
Bismarck, Otto von 98
black blocs 244
Black Lives Matter movement 187
Blair, Tony 35, 141–2, 159, 173–4, 229
Blut und Boden (blood and soil) ideology 113
Böhm, Franz 65, 75–6, 86–7, 138, 139
Bolaño, Roberto 16
Bolivia 203
Bolsheviks and the Bolshevik Revolution, October 1917 20, 69
Bolsonaro, Jair 4, 8, 76, 148, 157, 210, 212, 214–15, 229
Bonald, Louis de 23
Bonefeld, Werner 64–5
Bossi, Umberto 147
Bourdieu, Pierre 113
Brazil 39, 76, 152, 155–6, 164, 229
constitutionalization 204
judiciary 201–2
law 194
lawfare 198–9, 204–5
neoliberal fascism 210
Operation Car Wash 204–5
parliamentary coup, 2016 203, 204
Bretton Woods Agreement 135
Brexit 8, 132, 143, 144, 209
Brown, Wendy 4, 9, 110, 122–3, 125–6, 151–2, 209
Bruges, College of Europe 143–4
Buchanan, James M. 88, 133, 235n16
Buchanan, Pat 147
Burke, Edmund 125
Cáceres, Carlos Francisco 38–49, 89

Camdessus, Michel 141
capital controls, contesting 135–7
Carlson, John 199
Carr, Edward H. 221
Castro, Sergio de 24, 89
Center for American Progress 160, 161
Central Intelligence Agency (CIA) 17, 39
central planning 47, 49, 58, 65, 91, 94, 96, 131, 133, 144, 234
centralism 92
centralization 35
Chapoutot, Johann 213
Chavranski, Henri 141
Chicago, University of 23
Chicago Boys, the 23–4
Chicago School 34, 174–5
Chile 16–37, 203, 242
  Arms Control Act, 1972 21
  central bank 30
  centralization 35
  comandos comunales 21
  concentration of powers 23
  constituent power 26
  constitution, 1980 25–30, 31, 37, 39
  Constitutional Court 27, 31–2
  cordones industriales 20–1
  coup d'état, 1973 17, 19, 20–2, 39, 84, 85
  creative destruction 24–5
  Decree Law No. 128 26
  and democratic danger 39
  despertó movement 2, 33, 36, 185
  economic recovery programme 24
  enclaves autoritarios 30–1
  gradualist policy 24
  Hayek and 33–4
  higher education privatization 35–6
  junta's ideology 22–5
  left coup myth 21
  military dictatorship 11, 19
  national developmentalism 24
  National Security Council 27
  national security doctrine 23
  neoliberal transformation 30–3
  neoliberalism 23–5, 33–7
  phases of popular power 20–1
  Plan Laboral 25
  police violence 185
  privatizations 89
  referendum, 1988 30
  referendum, 2020 36
  social protest 31

state terror 22
US involvement in coup 22
war declared by Piñera 2–3
water-resource privatization 32–3
China 179
choice, freedom of 41
Christian renewal 115, 157
Christian values 114, 152–3
Ciotti, Éric 194
citizenship, exclusion of foreigners from 6
civic rights 246
civil liberties 246–7
civil rights 150
civil war
conceptualisation 1–2, 5–7
counterinsurgency paradigm 189–92
and liberalism 232
and neoliberalism 232–4
rationale 189–92
responses to 243–7
revolution against 241–2, 244–5
civil war policies 5–8
civil war strategies 1–2, 230, 234–6
civilization, danger to 11
class alliance 235
class consciousness 167
class struggle 64, 149, 167, 232–3, 244–5
Clinton, Bill 141, 142, 159, 229
Clinton, Hillary 162
coercion 121, 124, 127
Cold War 22, 191
collective action 247
criminalization 183
collectivism 12, 47, 47–8, 90, 91–2
danger of 39–40, 105, 116
rejection of 98–9
College of Europe, Bruges 143–4
colonialism 129–30
common good, the 44
commons, the 241
Commun, Patricia 117n17
communism 44, 56, 95
competition 12, 46, 225
championing of 110
and law 193–4
regulatory constraint 132
and socialism 93–4, 94–5, 96
and tradition 115
war against equality 15
competition-based order 40

competition-centred nationalism 142–4
competitive federalism 133
conformism, tendency towards 125
conservatism 109, 110, 113–18, 117–26
conservative values, promotion of 8
constituent power 26, 73, 84
Constitutional Courts 82–3
constitutional sovereignty 73
constitutionalism 76–7, 88–9, 200–2
constitutionalization 73–4, 75, 76, 204, 227
constitutions 228
  amendments 76, 83
  basic principles 78
  bicameral system 79–80
  and constituent power 73, 84
  decisionism 86–9
  economic 75–7, 229
  emergency powers 84–6
  exceptions 83–6
  Hayek's model 77–89
  legitimacy 83
  political 75–7
  representative bodies 81–3
  separation of powers 77, 79–80, 81–2
  and sovereignty 83–6
constructivist rationalism, error of 99–100
consumer democracy 95, 116
consumerism 158, 245
contraception 152
Cooper, Melinda 150
COP21 climate summit 195
corruption 45
Cortney, Philip 135
counteractive strategy 115
counterculture, the 150
counterinsurgency-warfare paradigm 189–92
Courbet, Gustave 1
Court of Justice of the European Communities (CJEC) 87–8, 138
creative destruction 24–5, 151
Cristi, Renato 219
cultural counterrevolution 150–4
cultural divergences 109
cultural evolution 118, 123–4
cultural globalization 8, 144
cultural identity, erosion narrative 8
cultural selection 125
culture wars 149, 235, 245
  cultural counterrevolution 150–4
  division 163–4
  the freedom tradition 154–6

historical dead end 163
moral crusade 152
reactionary right nationalism 156–8
working class support 158–63
decisionism 86–9, 180
decolonization 131–2
Dejours Christophe 166
Delmas-Marty, Mireille 196
Delors, Jacques 138–9, 143
Delors Commission 139
Delteil, Violaine 75
demarchy 60–2
democracy 245, 246–7
bargaining in 45–6
constitutional constraints 89
consumer 95, 116
dictatorial 63
forms of 40–3
institutional safeguards 57–8
legitimacy challenge 40
liberal 40–3, 44
mass 47
neoliberal conception of 40–3
procedural 42–3
Rougier's rejection of 41–2
socialistic 41–2
as threat to free market 10
totalitarian 42–3, 44–7
tyranny of the majority 45
democratic creep 44–7, 47
democratic danger 38–40, 60–2
totalitarian democracy 42–3, 44–7
democratic mystique, the 40
democratic pressure, strong state immunity to 57–60
democratization 48, 201
demophobia 40, 47–52
destiny 236–40
developmentalism 132
dictatorial democracy 63
dictatorship 62–6
in the interests of liberalism 66–72
state 86–9
dirigisme 49, 58, 90, 99, 137, 140
discipline, through the market 36
distributive justice 124
divorce 152n13
Dollfuss, Engelbert 71
Donoso Cortés, Juan 23
double government notion 132
Drucker, Peter 171–2

dual power 20n14
Dufresne, David 188
Dunlapm, Charles J. Jr 199
economic constitutionalism 88
economic constitutions 75–7, 229
    EEC 137–9
economic depoliticization 33
economic governance 138
economic nationalism 8, 234–5
    capital protection 135–7
    danger of 131–2
    EEC 137–9
    and the global economy 132–4
economic order, and law 75–6
economic policy 110
economic solidarity, and the global economy 132–4
economic war 165–7
economy, the
    and destiny 236–8, 239–40
    politicizing of 238–40
    social depoliticizing of 64–5
Ecuador 203
egalitarianism 126
El Libro Blanco (newspaper) 21
El Mercurio (newspaper) 19, 21, 22, 89
elective affinities 110
elites, power of 48, 50–2
elitism 247
emergency powers 84–6
enemies 179–80, 233–4
    manufacture of 183
    need to designate 9
    stigmatization 156–8
English Civil War 5
Enlightenment, the 154
entrepreneurial community 158
entrepreneurship 173–5, 176
equality 4, 7, 15, 52, 61, 124, 151, 158, 245–7
Erhard, Ludwig 38, 66, 136, 137–8, 236–7, 239–40
ethnic fundamentalism 146
Eucken, Walter 46–7, 48, 64–5, 76, 86–7
European Central Bank 18
European Coal and Steel Community (ECSC) 137
European Commission 139, 203, 226
European Convention on Human Rights 195
European Economic Community 87–8, 137–9
European Union 158, 175
    authoritarian dimension 226
    economic and monetary union (EMU) 139
    economic constitution 75, 76

Maastricht provisions 142
Treaty on 138–42
undermining of 144
evolutionism 118, 122–4, 127
family and family values 116, 121, 148, 153–4, 235
Fantasia, Rick 169
Farage, Nigel 144
fascism 44, 55–6
as guardian of civilization 69
neoliberal 209–15
fascist state, the 55–6
fascist violence, in the interests of liberalism 66–72
Fontaine, Lauréline 75
Fontana, Maurizio 153
Fordist compromise, the 166, 168–70, 173
foreign bodies, demonizing 157
foreigners, exclusion from citizenship 6
formalism 206
Forsthoff, Ernst 218
Foucault, Michel 5, 13, 14, 35, 153, 174, 179, 180–1, 182, 197, 206, 225
France 110, 162
attacks on freedom 156
counterinsurgency-warfare paradigm 191
cultural counterrevolution 150, 151
Fifth Republic 228, 229
France Télécom trial 170–1
gilets jaunes (yellow vest) protests 147, 180, 187–9, 195
and globalization 138–40
homeland and counterterrorism bill 195
Islamo-leftists 192
Notre-Dame-des-Landes urban development zone protests 184–5
police violence 187–9
policing model 185–6, 191
popular uprisings 5
state of emergency 194–7
France Télécom trial 170–1
Frankfurt School 177
Fraser, Nancy 149, 159
free economy, guaranteeing 54
freedom 4, 8, 41, 64, 126, 163–4, 209
academic 155–6
attacks on 156
and conformity 124
freedom tradition opposition to 154–6
to hate 151–2
individual 43, 44, 46, 154–6
Lippman's definition of 155
obedient 65–6
personal 246–7
political 43

reversed 196
freedom tradition, the 154–6
free-trade universalism 144
French Revolution 44, 53, 58
Freud, Sigmund 124, 177
Frickhöffer, Wolfgang 38
Friedman, Milton 8, 18, 34, 38, 225
Friedman, Thomas 3
fundamental rights 78, 80, 197
Gaudichaud, Franck 16, 20–1
Gaulejac, Vincent de 172
General Agreement on Tariffs and Trade (GATT) 135, 137, 138
Geneva Graduate Institute 132
Gentile, Giovanni 211
German liberalism 224, 225–6
German Society to Advance the Protection of Foreign Investments 136
Germany 139, 228, 236–8
authoritarian liberalism 215–19
Erhard reforms 38
Germany, Federal Republic of 228
Giddens, Anthony 142
Giroux, Henry 210
Giscard d'Estaing, Edmond 129
Giscard d'Estaing, Valéry 117
global civil war 6
global economy, the 131–2
Anglo-American relationship and 137
economic governance 138
and economic solidarity 132–4
the left and 138–42
global elites, denunciation of 8
global order, contestation of 7–8
globalization 5, 112, 134, 158, 172, 240
advent of 138
cultural 8
the left and 138–42, 143
Rothbard's critique of 145–7
Goulart, Joâo 39
Goupy, Marie 180–1, 197
government intervention 45
government prerogatives 78
governmentality, neoliberal 10–11, 176, 179, 210, 212
governmentalization 35
Gramsci, Antonio 149
Greece 203
Grossmann-Doerth, Hans 65
group identity, reinforcing 7
Guzmán, Jaime 23, 25–6, 27–8, 29–30
Haber, Stéphane 177
Haberler, Gottfried 66–7, 132

Harcourt, Bernard E. 190–1, 191–2
Hartman, Andrew 150
hate, freedom to 151–2
Hayek, Friedrich 8, 9, 10, 13, 28, 29, 40, 50, 93, 132
anti-union recommendations 104
argument in favour of liberalism 96
arguments for a strong state 57
and Chile 33–4
comparison with Röpke 114
and competition 46
and conservatism 117–26
constitutional exceptions 83–6
constitutional model 77–89
and constitutionalism 76–7
critique of trade unions 102, 103
defence of traditional values 117–26
definition of the state 73
demarchy 60–2
and democratic danger 38
and democratic mystique 40
denunciation of socialism 91
distrust of sovereignty 73–4
Dortmund speech, 1963 138
emergency powers 84–6
evolutionism 118, 122–4
first job 66
and freedom 43
influence 32
interstate federalism 133
on interventionism 54
justification of fascist violence 63
and the law 193–4, 223, 226
on liberal democracy 42–3
liberalism 117–26
and market-centred society 45
on military dictatorship 19
Nobel Prize 17–18
as Old Whig 121
opposition to coercion 121–2
and Pinochet 17–18, 19
refutation of socialism 93–4, 95–6, 99–100, 124
and rule of law 205–6
Schmitt’s influence on 220–3
social experimentation strategy 109
and social justice 45–6, 108
and sovereignty 83–6
on state power 60–2
and Thatcher 17, 18–19, 229
and totalitarian democracy 42–3, 44
on welfare state 105–8

and Western civilization 126–8
Hayek, Helene 18
hegemony 149
Heilperin, Michael 132, 134, 135
Heller, Hermann 208, 215–19, 219, 224, 225, 226
Hirschl, Ran 201
Hirschman, Albert 108
Hitler, Adolf 218, 221, 222
Hobbes, Thomas 5–8, 166n4
Hobsbawm, Eric 6
Hollande, François 140, 141
homeland war 182–7
homosexuality 150
Honduras 203
Hong Kong 227
Huber, Ernst Rudolf 65–6
human action, theory of 174
human capital 174–5
human capital theory 175
human rights 135–6
Hungary 156–8, 164
Hutt, William H. 93
identity 7, 8, 145
individual freedom 43, 44, 46, 154–6
individualism 49
industrial action, criminalization 183
Industrial Revolution 105, 110–12, 113
inequality 108, 158, 162
innovation 123–4
insecurity 180–2
Institute of Economic Affairs (IEA) 17
institutional constraints 40
institutional safeguards 57–8
insurrection 244, 247
International Chamber of Commerce (ICC) 134, 135, 136
International Code of Fair Treatment for Foreign Investors 136
International Convention for the Mutual Protection of Private Property Rights in Foreign Countries 136
international federation 132–4
International Monetary Fund (IMF) 135, 175, 194, 200
International Trade Organization (ITO) 135
interstate federalism 133
interventionism 14, 46, 54, 58, 111, 224, 225
Iran, Islamic Revolution 189
Islamist terrorism 190
Italian Fascism 64, 211–12, 213–14, 227
Italy 151, 152, 184
Jacobins, the 44
Jefferson, Thomas 59
Jospin, Lionel 138–42

judiciary 194, 199, 200, 201
Juncker, Jean-Claude 203
justice 80
Kaczyński, Jarosław 148
Keynes, John Maynard and Keynesianism 10, 17, 45, 93–4, 134, 139, 141, 218
Kirchheimer, Otto 217
Kirzner, Israel 97–8
Kittrie, Orde 197–8
Klein, Naomi 23–4, 34
Knight, Frank 67
Kohn, Hans 239
Kraus, Karl 67
Kristol, Irving 150
La Lega 146, 147, 152
labour
    division of 116, 123, 132
    exploitation of 245
labour market
    democratic potential of work 175
    de-unionization 168–70
    division of 111
    economic war 165–7
    elimination of employee benefits 173
    emphasis on personal commitment 170–3
    entrepreneurial model 173–5, 176
    neoliberalization 165–7
    new model 173–6
    pressure to perform 172–3, 176
    psychological mechanisms 176–8
    shift in management style 170–3
    union distortion of 103
Laclau, Ernesto 243
laissez-faire 34, 54, 67, 95–6, 125, 155, 189, 212
laissez-faire liberalism 53, 97–8, 110–11
laissez-faire naturalism 97, 193
Lallement, Didier 187
Lamy, Pascal 141
Lange, Oskar 94–5
Latin America 132, 198–9, 200–2, 203, 243
Laurent, Sylvie 4, 229
law 73–4
    and competition 193–4
    constitutional 80
    constitutionalism 200–2
    constitutionality 76
    constitutionalization of 79–80
    contesting universal suffrage 202–3
    and economic order 75–6
    enforcement 80
    entrepreneurial version 205–7

formalism 206
impartiality 194
need for 193–4
private 77, 79–80, 206–7, 226
role of 193, 219–23, 225
state of emergency 194–7
subordination to fundamental rights 197
warfare strategy 194, 197–200, 204–5
weaponization 197–9
lawfare 197–200
Brazil 204–5
contesting universal suffrage 203
entrepreneurial version 205–7
lawlessness 2
Le Bon, Gustave 48
Le Figaro (newspaper) 203
Lefrançais, Gustave 242
left, the
and globalization 138–42, 143
new progressivism 159–63, 164
perceived betrayal by 159
left liberalism 138–42
left populism 243–4
left-wing governments
failure 243
neoliberal manoeuvrings 5
legislation 81–2
legislative assembly 81
legitimate violence 70–1
liberal democracy 40–3, 44
liberal dictatorships 39
liberalism 43, 52, 53, 58, 97–8
authoritarian 53–4, 208, 209, 215, 225, 226–7
and civil war 232
fascist violence in the interests of 66–72
Hayek's version 117–26
laissez-faire 53, 97–8, 110–11
left 138–42
Manchester 97
updating 127–8
and Western civilization 126–30
liberty 120
Lippmann, Walter 10, 40, 50, 51, 58
arguments for a strong state 59–60
definition of freedom 155
modernizing strategy 109, 110–13
refutation of socialism 95
and Western civilization 126–7
Lisbon, Treaty of 76
living standards 246

Locke, John 49
Lombard, Didier 171
Loraux, Nicole 242
Lula da Silva, Luiz Inácio 198, 199, 202, 204–5
Machlup, Fritz 67, 103
Macron, Emmanuel 110, 156, 188, 197
Maistre, Joseph de 23
Manchester Liberalism 97
Manchester School 216, 225
market, the constitutionalization of 89, 227
market constitutionalism 77
market order, defence of 13
market rules 121–3
market-police 54, 65–6
Marx, Karl 124, 241–2, 242
Marxism 90, 92, 177
mass democracy 47
masses, the
  age of 47
  fear of 47–52, 236
  irrationality of 49
  limiting the power of 50–2
  magical thinking of 49
  power of 41
  as threat to civilization 236
Mestmäcker, Ernst-Joachim 87–8, 138
middle classes 7, 159
Miksch, Leonhard 65
military dictatorship 11, 19
Mincer, Jacob 174
minority identities, equality 246
Mises, Ludwig von 10, 40, 52, 54, 97–8, 132, 232–3
  critique of trade unions 100–1
  on dictatorship 66–72
  on proletarianization 233–4
  refutation of socialism 91–3
  supranational government 133
  theory of human action 174
  and Western civilization 128–9
Mitterrand, François 141
modernity 48
modernizing strategy 7, 109, 110–13
monetarism 19
monopolies 117
Mont Pelerin Society 13, 38–9, 67, 89, 90, 101–2, 113, 119, 127, 135, 137
moral codes 121–3
moral crusade 152
moral harassment 171
moral permissiveness 126
moral values 121–3

Morales, Evo 203
Mouffe, Chantal 243
Müller-Armack, Alfred 64, 87, 137–8, 139, 174
Mussolini, Benito 211–12, 218
Myrdal, Alva 18, 19
Myrdal, Gunnar 17–18
Najman, Maurice 20, 21
Napoleon 238, 239
nation states, role of 131–2
national developmentalism 24
national identity 8
national security 23
National Socialism 64
nationalism 5, 214, 247
  competition-centred 142–4
  danger of 131–2
  economic 234–5
  reactionary right 156–8
  right-wing extremism 145–7
natural rights 49
naturalism 13
Nazi Germany 64–6, 87, 213–14
Nazism 10, 40, 56, 64, 95, 96, 114, 212–13, 221–2, 227
negative sovereignty 83
negotiation, suppression of 180
neoconservatism 110
neo-fascism, drift towards 164
neoliberal fascism 209–15
neoliberal governmentality 10–11, 176, 179, 210, 212
neoliberal political authoritarianism 230
neoliberalism
  advent of 131–2, 219–20
  alternative history 12–15
  anti-democratic spirit 39–40
  authoritarianism 208–9, 224–6, 229–32, 235–6
  Chile 23–5, 33–7
  and civil war 232–4
  civil war strategies 1–2, 230, 234–6
  conception of democracy 40–3
  connection with authoritarianism 53–4
  contemporary forms 9
  core logic 9
  crisis of 231
  death of 209
  definition 12, 219, 224–6, 228
  dominance of 7–8
  freedom tradition 154
  goals 10
  heroic interpretation 39–40
  history 9–11

legitimacy 154
mission 90
motivation 90–1
need to designate enemies 9
novelty of 208
poison 163
political goals 13, 59
progressive 246
radicalization 41
range of political terrains 149
role of law in 219–23
strategy 11, 58–60, 236–8
underlying tenets 33–4
Neurath, Otto 92
new governing paradigm 190–2
new left, the, role of 246
new progressivism 159–63, 164
new public management (NPM) 158
Nietzsche, Friedrich 177
Nixon, Richard 17, 22
Nolte, Ernst 6
North American Free Trade Agreement (NAFTA) 142, 145–6
Northern Ireland 183, 184
Nuestro camino 22–3
obedient freedom 65–6
Occupied Palestinian Territories 183
oligarchy, the 6–7, 57
Opus Dei 23
Orbán, Viktor 148, 153, 157, 158
ordoliberalism 10, 13, 38, 56–7, 79, 137, 237, 240
decisionism 86
economic vision 66
and trade unionism 102–3
Organisation for Economic Co-operation and Development (OECD) 141, 175
Ortega y Gasset, José 48, 115
paleoliberalism 67, 147
Paraguay 203
Paris 211
Paris Commune and the Communards 1, 241–2, 244
parliamentary power, danger of 44–7
Paxton, Robert 210–11
Peronism 243
Perot, Ross 147
Peru 203
Petro, Sylvester 104n42
Piñera, José 34
Piñera, Sebastián 2–3
Pinochet, Augusto
coup d’état, 1973 17, 20–2, 39, 85
and Hayek 17–18, 19

made senator for life 30–1
repression 22
plebiscitary dictatorship 45
plutocratic dictatorship 210
Poland 152, 164
Polanyi, Karl 224
polarization 4, 149, 159
police and policing 168, 191–2
militarization 183, 185–7
powers 179, 182–5, 195
police states 195–6
police violence 185, 187–9
policy entrepreneurs 12
political and ideological duopoly 149
political authoritarianism 225–6, 226–30
political authority 60
political constitutions 75–7
political crimes 193
political objective 13
political regimes 228–30
political rights 150
political saturation 149
politics
conceptualisation 1–2
and destiny 238–40
popular mobilizations 244
popular sovereignty 40–3, 42, 45, 73, 203
Popular Unity (Chile) 20
popular uprisings 5
popular will 41
populism 147, 209
left 243–4
right-wing 163–4, 243
Portugal 39, 78, 227
power
concentration of 23, 217
constituent 26, 73, 84
constitutions 84–6
dual 20n14
of elites 48, 50–2
emergency 84–6
exercise of 232–3
limitation of 60
of the masses 41, 50–2
parliamentary 44–7
popular 20–1
state 44, 60–2, 217
strong state 60–2
transfer of between state institutions 30–1
precariat, the, emergence of 173

private interests 64
private law 77, 79–80, 206–7, 226
private property 41, 46
  protection of 67–71
privatization 32–3, 35–6, 89, 125, 158, 212
progress 123
progressive neoliberalism 159, 246
progressive values, government by 158–63
proletarianization 233–4
prosperity, theology of 157
protected democracy 33–4
protectionism 132, 143
racism 128–30, 145, 151, 214, 247
radical right 5, 8
Radiszcz, Esteban 3n3
Ranelagh, John 18
Rappard, William 132
Rathenau, Walter 236–8, 239
rationalism 47
reactionary right 150–4, 156–8, 163–4
Reagan, Ronald 14n23, 89, 169–70
Red Vienna 92
religion 12, 110, 148, 211, 245
  defence of 118, 126
  Hayek and 126
  influence 125
  neoliberalizing of 157–8
  values of 8, 121, 148, 154, 231
Renzi, Matteo 141
representative bodies, Hayek's model 81–3
resentment, exploitation of 7
revolution, against civil war 241–2, 244–5
right-wing extremism 145–7
right-wing populism 163–4, 243
Robbins, Lionel 67, 93, 132–3
Rocard, Michel 138–42
Rome, Treaty of 87–8, 137, 138
Röpke, Wilhelm 12n19, 39, 40, 47, 47–8, 50, 51, 57, 93, 132, 137, 174
  arguments for a strong state 56, 58–60
  comparison with Hayek 114
  conservatism 109, 113–18
  consumer democracy 95
  counteractive strategy 115
  and dictatorship 62–3, 64–5
  and historical circumstances 228
  objection to economic nationalism 133–4
  originality 115
  on proletarianization 233
  and Rathenau 237
  social-integration policy 114

two fronts strategy 97–9
and Western civilization 130
Roque, Tatiana 204
Rosenberg, Alfred 218
Rothbard, Murray 97–8, 145–7
Rougier, Louis 9, 40–2, 44, 48–50, 129–30, 219
arguments for a strong state 58–9
Rousseau, Jean-Jacques 44, 49
Rousseff, Dilma 202, 204
Rule of Law 45, 200
entrepreneurial version 205–7
erosion of 194–7
Rüstow, Alexander 14–15, 50, 54, 129, 174, 220
arguments for a strong state 56–7
and dictatorship 62, 64–5
Salazar, António de Oliveira 39, 227
Salvini, Matteo 8, 153, 157
Scargill, Arthur 168
Schmitt, Carl 6, 26, 32, 40n4, 47, 54, 73, 82, 224, 240
arguments for a strong state 55–7, 215–19
decisionism 86–7, 180
and dictatorship 63
influence on Hayek 220–3
objection to economic nationalism 134
and Rathenau 237–8
and victory of industrial society 239
Schröder, Gerhard 141, 159, 173–4
Schultz, Theodore 174
Schumpeter, Joseph 90, 151
science 90
security guarantees 180–2
security pact, undermining 180–2
Seipel, Ignaz 67
self-government 245, 246–7
separation of powers 77, 79–80, 81–2
Simard, Augustin 216, 218, 219
Sked, Alan 144
slavery 128–9
Smith, Adam 13
social confrontation 149
social Darwinism 212–14, 234
social engineering 25
social experimentation strategy 109
social insurance 105, 106–7
social justice 7, 44–7, 78, 100, 124
myth of 45–6, 108
social market economy 64, 101, 139
social media 192
social mobility 164
social partners 103

social policy, resisting 105
social protection 40, 53, 180–2
social relations 33
social security 105–8, 180–2
social-integration policy 114
socialism 4, 44, 47, 90, 234
  combating 117–26
  and competition 93–4, 94–5, 96
  destructionism 92
  eradication of 91–100
  Hayek's refutation of 93–4, 95–6, 99–100, 124
  heart of 100
  Lippmann's refutation of 95
  Mises' refutation of 91–3
  project to neutralize 12
  threat of 92–3
  and totalitarianism 95
  two fronts strategy against 97–100
socialistic democracy 41–2
society, massification of 50
South Africa 130
sovereign dictatorship 63
sovereignty 8, 134, 232–3, 247
  brutal 192
  constitutional 73
  distrust of 73–4
  Hayek's denunciation of 91
  institutional constraints 40
  limiting 133
  negative 83
  popular 40–3, 42, 45, 73, 203
  state 86, 182, 241
Spain 23, 188, 227
Spencer, Herbert 110–11
Stalinism 44
state, the
  Hayek's definition 73
  interventionism 58
  legitimacy 49
  monopoly on violence 72
  role of 5–8, 29
  total 55–6, 64, 220–1
  transfer of power between institutions 30–1
  undermining of security pact 180–2
  welfare role 106–7
  see also strong state
state authoritarianism 86, 164, 226, 228–9
state dictatorship 86–9
state intervention 29–30, 46
state of emergency 194–7

state of nature, resurgence of 5
state power 44, 60–2, 217
state repression 10–11
state sovereignty 86, 182, 241
state violence 9, 54, 62–6, 182, 182–7, 212, 235
  in the interests of liberalism 66–72
statism 49
Stiegler, Barbara 110, 113
strategic flexibility 11
strategies 1–2, 7
  adaptive 8–11
  neoliberal 58–60
  two fronts 97–100
stratification 15
strong state 234
  arguments for 55–7, 58, 215–19
  and dictatorship 62–6
  immunity to democratic pressure 57–60
  need for 53–4, 227
  power 60–2
  reactionary right defence of 164
  violence 54, 66–72
subjectification 177–8
subsidiarity 28–9, 225
supranational government 132–4
Switzerland 115
Talmon, Jacob Leib 44
taxation 144
Taylor, Marcus 24–5, 30
technological innovation, cult of 158
Temer, Michel 76
Terra Nova 161
terrorism 181, 189–92, 194–5
Thatcher, Margaret 14n23, 84, 89, 117, 146, 240
  authoritarianism 35
  Bruges speech, 1988 143–4
  cultural counterrevolution 150–1
  and Hayek 17, 18–19, 229
  miners' strike, 1984–85 165, 168–9, 183–4
  policing model 183–4, 191
  right-wing populism 243
  trade union policy 18, 104, 168–9
theology, of prosperity 157
Thiers, Adolphe 241–2
think tanks 17
Third International, the 69
Third Way, the 141–2, 159, 173–4, 229, 235
Third Worldism 132, 135
Thucydides 2
total state, the 55–6, 64, 220–1

total wars 6
totalitarian democracy 42–3, 44–7
totalitarian drift 222
totalitarian regimes, wars between 6
totalitarianism 39–40, 43, 95, 193
trade unionism 18, 90, 92, 100–4, 168–70
tradition
  and competition 115
  and the defence of Western civilization 126–30
  obeying 123
  respect for 57
  retrospectively inventing 67
  Röpke's conservatism 113–18
  and rules 121–3
traditional values, defence of 117–26, 148
transsexuality 150
Traverso, Enzo 6n8
true people, the 156–8
Trump, Donald 132, 143, 144, 157, 158, 164
  defence of traditional values 148
  elected president 8, 209
  executive orders 228–9
  neoliberal authoritarianism 229
  neoliberal fascism 210–11, 212, 214–15
  paleolibertarian tradition 147
  policing model 187
  presidential election 2020 4
Trumpism 8, 110
Tsipras, Alexis 203
two fronts strategy 97–100
tyranny of the majority 45
United Kingdom 93–4
  Blair government 142
  Bruges Group 144
  constitutional model 77
  economic policy 110
  General Strike of 1926 184
  miners' strike, 1984–85 14n23, 165, 168–9, 183–4
  policing model 168, 182–4, 191–2
  trade union policy 18
United Nations 135, 136, 188
  Economic and Social Council (ECOSOC) 135
United States of America
  Christian right 148
  counterculture 150
  counterinsurgency-warfare paradigm 191
  de-unionization 169–70
  drift towards neo-fascism 164
  economic policy 110
  imperialism 22

lawfare 199–200
National Labor Relations Act (NLRA), 1935 169
neoliberal fascism 210–11, 214–15
New Deal 160, 161, 169
new progressivism 159–63
Operation Condor 22
Patriot Act, 2001 190
polarization 4
presidential election 2020 3–5
reactionary right nationalism 156–8
right-wing extremism 145–7
storming the Capitol, 6 January 2021 3, 164, 211, 214
Taft-Hartley Act, 1947 169
and trade unionism 104
Trump presidency 143, 228–9
Universal Declaration of Human Rights 135–6
universal suffrage 27, 202–3
universalism 144
US Constitution 88–9
utopia, backward-looking 113–16
Valim, Rafael 198
Valls, Manuel 196
values 62
Christian 114, 152–3
clash of 4
defence of traditional values 117–26, 148
family 116, 121, 148, 153–4, 235
moral 121–3
promotion of conservative 8
religious 8, 121, 148, 154, 231
Vázquez de Mella, Juan 23
Venezuela 203
vested interest groups 57, 59, 60, 232–3
Vichy France 227
Vietnam War 22
violence 54
anti-worker 180
against citizens 179
conditional 71
conservative 11
fascist 11, 63, 66–72
in the interests of liberalism 66–72
legitimate 70–1
neoliberal 11
permanent 71
police 185, 187–9
popular mobilizations 244
state 54, 62–6, 182, 182–7, 212, 235
state monopoly on 72
Vitalpolitik 50

Vlaams Belang 146
Voegelin, Eric 93
von der Groeben, Hans 138
Voss, Kim 169
wage negotiations 101–2
Walker, Scott 169–70
Walter Lippmann Colloquium 9, 13, 14–15, 41–2, 44, 97, 127, 219–20, 223, 224
war on terror 179, 190
wealth redistribution 105, 144, 201
Weber, Max 72, 108
Weimar Republic 39, 47, 55, 66, 82, 177
welfare state 46, 90, 126
    attack on 105–8
    class alliance 235
    danger of 39–40
    dependence on 107
    dismantling 53
    dread of 10
Western civilization, superiority of 126–30
white civilization, extinction threat 151
white supremacism 156–8
women’s rights 150, 152, 246
work, democratic potential 175. *see also* labour market
working class 245
    culture wars support 158–63
    division 163–4
    espousal of right-wing and far-right values 162
World Bank 135, 175, 194, 200
World Congress of Families 153
World Trade Center, 11 September 2001 attacks 189
World Trade Organization (WTO) 138
Yeomans, Neville 199
Zapatero, José Luis 141
Zeeland, Marcel van 63